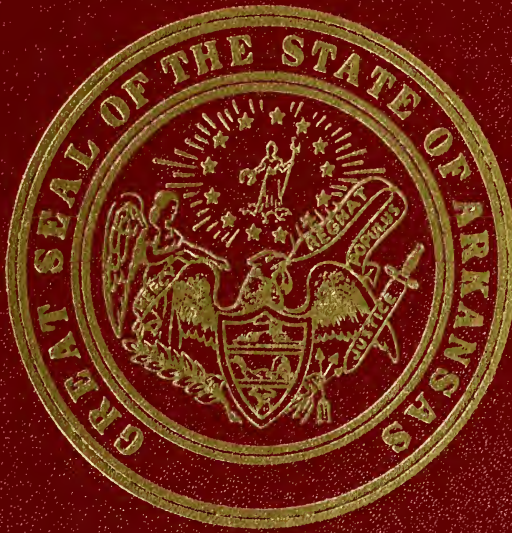


**ARKANSAS CODE
OF 1987
ANNOTATED**

OFFICIAL EDITION



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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 8A 2009 Replacement

TITLE 12: LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS (CHAPTERS 1-59)

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
ARKANSAS CODE REVISION COMMISSION

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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2009 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2009 Ark. LEXIS 489 (October 5, 2009) and 2009 Ark. App. LEXIS 614 (July 1, 2009).

Federal Supplement through September 1, 2009.

Federal Reporter 3d Series through September 1, 2009.

United States Supreme Court Reports through September 1, 2009.

Bankruptcy Reporter through September 1, 2009.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 17, p. 757.

ALR Fed. 2d through Volume 21, p. 361.

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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

TITLE 12
**LAW ENFORCEMENT, EMERGENCY
MANAGEMENT, AND MILITARY AFFAIRS**
(CHAPTERS 60-87 IN VOLUME 8B)

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SUBCHAPTER.

1. HIGHWAY SAFETY PROGRAM ADVISORY COUNCIL. [REPEALED.]
2. RAPE TASK FORCE. [REPEALED.]
3. ENFORCEMENT OF MOTOR VEHICLE TRAFFIC LAWS.
4. PATROL VEHICLES.

SUBCHAPTER 1 — HIGHWAY SAFETY PROGRAM ADVISORY COUNCIL

SECTION.

12-6-101, 12-6-102. [Repealed.]

12-6-101, 12-6-102. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1997, No. 250, § 63. The subchapter was derived from the following sources:

12-6-101. Acts 1983, No. 549, § 16;	1985, No. 143, § 1; A.S.A. 1947, § 75-2514.
	12-6-102. Acts 1983, No. 549, § 16;
	1985, No. 143, § 1; A.S.A. 1947, § 75-2514.

SUBCHAPTER 2 — RAPE TASK FORCE

SECTION.
12-6-201, 12-6-202. [Repealed.]

12-6-201, 12-6-202. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1991, Nos. 727 and 828, § 5. The subchapter was derived from the following sources:

	12-6-201. Acts 1981, No. 881, § 1; A.S.A. 1947, § 41-1818.
	12-6-202. Acts 1981, No. 881, § 2; A.S.A. 1947, § 41-1819.

SUBCHAPTER 3 — ENFORCEMENT OF MOTOR VEHICLE TRAFFIC LAWS

SECTION.
12-6-301. Definitions.
12-6-302. Arrest quotas prohibited.

SECTION.
12-6-303. Use of number of arrests.

12-6-301. Definitions.

As used in this subchapter:

- (1) "Arrest quota" means any requirement regarding the number of arrests made, or the number of citations issued, by a law enforcement officer or the proportion of such arrests made and citations issued by a law enforcement officer relative to the arrests made and citations issued by another law enforcement officer or group of officers; and
- (2) "Citation" means a notice to appear, notice of violation, or notice of parking violation.

History. Acts 1995, No. 952, § 1.

12-6-302. Arrest quotas prohibited.

No state or local agency employing law enforcement officers engaged in the enforcement of any motor vehicle traffic laws of this state or any local ordinance governing motor vehicle traffic may establish any policy requiring any law enforcement officer to meet an arrest quota, except as necessary to meet requirements under federal law or contracts with federal agencies.

History. Acts 1995, No. 952, § 2.

12-6-303. Use of number of arrests.

(a) No state or local agency employing law enforcement officers engaged in the enforcement of any motor vehicle traffic laws may use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, or dismissal, or the earning of any benefit provided by the agency.

(b) Any such arrests or citations and their ultimate dispositions may only be considered in evaluating the overall performance of a law enforcement officer.

History. Acts 1995, No. 952, § 3.

SUBCHAPTER 4 — PATROL VEHICLES**SECTION.**

12-6-401. Smoking in patrol vehicles prohibited.

12-6-401. Smoking in patrol vehicles prohibited.

Each county sheriff's office and police department of a municipality may designate a proportionate number of its patrol vehicles as "non-smoking" vehicles and shall not allow smoking of tobacco products in those vehicles.

History. Acts 2001, No. 1392, § 1.

CHAPTER 7**ARKANSAS CRIME COMMISSION****SECTION.**

12-7-101 — 12-7-106. [Repealed.]

12-7-101 — 12-7-106. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 1991, No. 343, § 2. The chapter was derived from the following sources:

12-7-101. Acts 1977, No. 558, § 1; A.S.A. 1947, § 6-1301.

12-7-102. Acts 1977, No. 558, § 2; A.S.A. 1947, § 6-1302.

12-7-103. Acts 1977, No. 558, § 3; A.S.A. 1947, § 6-1303.

12-7-104. Acts 1977, No. 558, § 4; A.S.A. 1947, § 6-1304.

12-7-105. Acts 1977, No. 558, § 5; A.S.A. 1947, § 6-1305.

12-7-106. Acts 1977, No. 558, § 6; A.S.A. 1947, § 6-1306.

Acts 1991, No. 343, § 1, provided: "The Arkansas Crime Commission created under Arkansas Code § 12-7-101 is abolished."

CHAPTER 8

DEPARTMENT OF ARKANSAS STATE POLICE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. POLICE OFFICERS.
3. DEPARTMENT OF ARKANSAS STATE POLICE COMMUNICATIONS EQUIPMENT LEASING ACT.
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5. CRIMES AGAINST CHILDREN DIVISION.

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SECTION.

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- 12-8-102. Commission created — Members — Meetings — Executive office.
- 12-8-103. Commission's powers and duties — Restrictions.
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- 12-8-110. Deputizing citizens in emergency.
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- 12-8-118. Payment of salaries and expenses.
- 12-8-119. Police training school.
- 12-8-120. Background investigations.
- 12-8-121. Use of state uniform, patch, or logo prohibited.
- 12-8-122. [Repealed.]
- 12-8-123. [Repealed.]
- 12-8-124. [Repealed.]

Preambles. Acts 1973, No. 430 contained a preamble which read: "Whereas, the Arkansas State Police currently provide supplemental police protection at the horse and dog racing tracks in this state, at University of Arkansas football games in Little Rock and Fayetteville, and a number of other state-wide events and activities, yet does not provide similar services, when requested, for many other state-wide athletic events of other state supported colleges and universities, at the State Livestock Show, or events conducted at the State Livestock Show, at the state basketball tournaments and similar events; and

"Whereas, it is essential for the protection of the public peace and safety that the State Police provide the same level of

police protection for all state-wide functions...."

Effective Dates. Acts 1945, No. 231, § 28: Mar. 20, 1945. Emergency clause provided: "It having been ascertained and determined by the General Assembly that on account of the widespread disregard for the traffic laws of the state and the rules and regulations governing the same as a result of the establishment of many large war plants and military posts in the State of Arkansas, together with the enormous increase of traffic caused by the war, which has created conditions at and around such war plants and military posts creating a condition upon the highways of this state which, in order to efficiently operate the Department of Arkansas State Police, make it necessary that the

same be departmentalized and organized in such manner that the personnel of said department can be assigned and directed in a more efficient manner and because of the hazards to life and limb as a result of the disregard for the laws making such conditions dangerous to the health, peace, and safety of the people of Arkansas an emergency is hereby declared to exist and this act being necessary for the preservation of the peace, health, and safety of the citizens of this state and for the traveling public, this act shall take effect and be in full force after its passage and approval."

Acts 1949, No. 157, § 2: Feb. 23, 1949. Emergency clause provided: "It has been found by the General Assembly: (1) that highway accidents and fatalities have been and are increasing with such rapidity it is imperative that immediate action be taken to make and enforce rules or regulations having for their primary purpose a reduction of such accidents and fatalities; (2) that more effective rules and regulations can be promulgated by an enlarged Commission, the members of which are residents of and familiar with conditions in the various sections of the State; and (3) that only the provisions of this act will alleviate in part the foregoing conditions. An emergency is therefore declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval by the Governor."

Acts 1953, No. 74, § 3: Feb. 16, 1953. Emergency clause provided: "It is found by the General Assembly that confusion exists in connection with appointments to be made to the Arkansas Police Commission due to congressional redistricting of the state; that such confusion interferes with proper exercise and discharge of the duties of the Police Commission pertaining to traffic violations and criminal actions; and that such conditions adversely affect the public peace, health, and safety; and further that the provisions of this act will materially aid in alleviating such conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1963, No. 133, § 2: July 1, 1963.

Acts 1968 (1st Ex. Sess.), No. 65, § 3: became law without Governor's signature, Feb. 27, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that Section 4 (a) Act 231 of 1945 requires, as interpreted by the Supreme Court of Arkansas, that the Director of the Department of Arkansas State Police possess the qualification of 10 years of continuous residence in the State of Arkansas next preceding his appointment; and such requirement has the effect of excluding from consideration for appointment to such position, persons who because of their training and experience, are well qualified to hold the position of Director of the Department of Arkansas State Police and to carry out the duties and responsibilities imposed by law upon the said Director; and that in order for the Governor of the State of Arkansas to be able to appoint the best qualified person available for the position of Director of Arkansas State Police, it is necessary that the ten year continuous residence requirement of Act 231 of 1945 be repealed; and in order to protect the citizens of the State of Arkansas and their interest in effective and efficient law enforcement, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall become effective, and be in full force and effect, from and after its passage and approval."

Acts 1969, No. 394, § 3: Apr. 11, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law contains no authority for the payment of per diem and mileage to members of the Arkansas Police Commission, that it is essential that provision be made for the payment of a reasonable per diem and mileage to members of the commission in order that the commission may properly carry out its functions and duties, and that this act will provide such authority. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of public peace, health, and safety shall be in effect from the date of its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1035, § 3: Jan. 27, 1976. Emergency clause provided: "It is hereby found and

determined by the Seventieth General Assembly, meeting in Extended Session, that the standardization of mileage reimbursement for members of the State's Boards and Commissions will alleviate many discrepancies and inequities in existing laws and will allow such members to receive travel reimbursement commensurate with that paid to state employees. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 45, § 15: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the agencies, departments, and programs now performed through the Department of Public Safety could more efficiently and economically perform their respective duties and responsibilities through reorganized agencies and departments operating as separate entities; that substantial savings could be made by eliminating the central services of the Department of Public Safety; and that the immediate passage of this act is necessary to provide for advance planning for more efficient administration after the close of the current fiscal biennium of the various public safety programs of this state. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1981."

Acts 1981, No. 540, § 18: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the

public peace, health, and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 537, § 12: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1983."

Acts 1987, No. 862, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1035 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1037, § 16: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1989 (1st Ex. Sess.), No. 285, § 15: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1989, No. 859, § 3: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the establishment of a 'drug abuse hotline' to be operated by the Arkansas State Police would provide needed assistance in the fight to control the drug problem in the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 1099, § 25: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 508, § 22: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 462, § 5: Feb. 27, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is presently no law designating a state government official to act as an intermediary between the Office of the Department of Defense Coordinator for Drug Enforcement Policy and Support and local law enforcement agencies for the purpose of transferring surplus Department of Defense property to local law enforcement agencies for counter-narcotics operations; that this act so provides; and that this act should go into effect immediately in order to facilitate the transfer of surplus Department of Defense property to local law enforcement agencies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1154, § 19: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the

operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 853, § 20: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 1240, § 12: Apr. 9, 1997. Emergency clause provided: "It is found and determined by the General Assembly that the powers and duties of the Department of Human Services in regard to the child abuse hotline and child abuse investigations will be shifted to the Arkansas State Police, either through transfer or by contract; that such transfer or contract could occur prior to or at the beginning of the next fiscal year; and that such transfer or contract cannot occur prior to or at the beginning of the next fiscal year unless this emergency clause is adopted. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 750, § 2: Mar. 13, 2001. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas State Police is presently without a director; that without an emergency clause this act would not be effective until ninety (90) days after the adjournment sine die of the General Assembly; that a new director should be appointed before this act would take effect without an emergency clause; and that the members of the Arkansas State Police Commission should be consulted prior to that appointment. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1422, § 21: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2003, No. 1609, § 24: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly,

that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

Acts 2005, No. 194, § 2: Feb. 17, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the procedure for accepting military surplus property has changed; that Arkansas law is not currently consistent with the new procedure; that this act is immediately necessary in order to process all military surplus property consistently in accordance with the new procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-8-101. Department of Arkansas State Police created.

(a) There is created the Department of Arkansas State Police for the purposes of enforcing the motor vehicle laws, traffic laws, and other state laws relating to protecting and properly maintaining the state highway system of the State of Arkansas and to render more effective the apprehension of criminals and the enforcement of criminal law.

(b) The police officers provided for in this chapter shall be known as "Arkansas State Police".

History. Acts 1945, No. 231, § 1; A.S.A. 1947, § 42-401.

Publisher's Notes. Acts 1945, No. 231, § 25, in part, expressly repealed Acts

1937, No. 166 and Acts 1941, Nos. 371 and 372. The section vested all powers and duties of the Superintendent of the Arkansas State Police in the Director of the Arkansas State Police and vested all duties of the Arkansas State Police Commission and the State Police Department in the Department of Arkansas State Police.

Acts 1981, No. 45, § 2, provided, in part, that the Department of Arkansas State Police and the Arkansas Police Commission, which had previously been transferred by a type 2 transfer to the Department of Public Safety (abolished by Acts 1981, No. 45, § 1) by Acts 1971, No. 38, § 14, and all of their respective functions, powers, duties, personnel, and funds would be separated from the Department of Public Safety; that the department and commission would function, operate, and perform the same powers, functions, and duties; and that the members or heads thereof would be appointed in the same manner, as if they had never been transferred to the Department of Public Safety.

The section further provided that all powers, functions, and duties added to the Police or Police Services Division of the Department of Public Safety, subsequent to the enactment of Acts 1971, No. 38, would be vested in and performed by the Department of Arkansas State Police, and that all powers, functions, and duties of the Arkansas Police Commission with respect to the Department of Arkansas State Police, and all additional powers and duties of the commission added subsequent to the enactment of Acts 1971, No. 38, which had not been repealed, would be performed by the commission in the same manner as they were performed prior to the passage of Acts 1971, No. 38.

In addition, the section provided that nothing in the act should be construed to reduce any rights which an employee of the Department of Arkansas State Police had under any civil service or merit system.

12-8-102. Commission created — Members — Meetings — Elective office.

(a) The Arkansas State Police Commission is created and established.

(b)(1) The commission shall be composed of seven (7) members to be appointed by the Governor for terms of seven (7) years, by and with the advice and consent of the Senate.

(2)(A) Four (4) members shall be appointed from each of the four (4) congressional districts and three (3) shall be appointed from the state at large.

(B) However, no more than two (2) members shall be appointed from any congressional district.

(3) The members of the commission in office on July 30, 1999, shall continue to serve their regular terms. As terms expire and vacancies occur, appointments to the commission shall be made in such a manner as to assure the commission members represent the different areas of the state as required by this subsection.

(c)(1) When vacancies occur in the commission, the Governor may temporarily fill the position consistent with subsection (b) of this section until the Senate is next in session.

(2) All appointments made at any time other than on the day following the expiration of a term shall be for the unexpired portion of the term.

(d) The commission shall meet and organize, electing one (1) member as chair and one (1) member as secretary.

(e) The chair shall have the power to convene the commission at such time as he or she may deem proper after due notice thereof to all the members of the commission.

(f) The commission is directed to hold a minimum of one (1) meeting per month.

(g) Except for those absences due to illness of the commissioner, failure of any commissioner to attend three (3) consecutive meetings shall constitute cause for removal from office by the Governor.

(h)(1) A majority of the members of the commission shall constitute a quorum to transact any business properly brought before it and not inconsistent with the provisions of this chapter.

(2) A quorum may do and perform other duties as are prescribed in this chapter or that may be necessary for the proper enforcement of this chapter.

(i) Members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(j)(1) No member of the commission shall be eligible to hold or run for any elective office, either state or county, during the time he or she shall serve as a member of the commission.

(2) Any violation of subdivision (j)(1) of this section shall constitute cause for removal by the Governor.

History. Acts 1945, No. 231, §§ 2, 3; 1949, No. 157, § 1; 1953, No. 74, § 1; 1969, No. 394, § 1; 1975 (Extended Sess., 1976), No. 1035, § 1; 1981, No. 540, § 9; A.S.A. 1947, §§ 6-616, 42-402, 42-403, 42-403.1; reen. Acts 1987, No. 862, § 1; 1991, No. 1099, § 12; 1991, No. 1223, § 1; 1997, No. 250, § 64; 1999, No. 149, § 1.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 862, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the

1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. For detachment of commission from Department of Public Safety, see Publisher's Notes to § 12-8-101.

The terms of the members of the Arkansas State Police Commission are arranged so that one (1) term expires January 14 each year.

12-8-103. Commission's powers and duties — Restrictions.

(a) The Arkansas State Police Commission shall:

(1) Approve or disapprove each promotion;

(2) Approve or disapprove each demotion for nondisciplinary reasons; and

(3) Review each application for employment presented to it by the Director of the Department of Arkansas State Police for certification to the eligibility list.

(b)(1) The commission shall hear appeals of any disciplinary action taken against a commissioned officer by the director that results in removal, suspension, discharge, demotion, or disciplinary transfer.

(2) The appeal shall be heard under § 12-8-204(b).

(c) The members of the commission are granted disciplinary authority equal to that of supervisory and administrative personnel of the Department of Arkansas State Police with respect to violations of rules

and regulations committed by a department employee in the presence of a commissioner.

(d)(1) In addition to its existing powers and duties, the commission may administer oaths and subpoena witnesses, books, records, and other documents deemed necessary for the proper investigation and performance of any powers, functions, or duties of the commission.

(2) All such subpoenas shall be issued by the chair of the commission or such other members of the commission as authorized by a majority vote of the membership of the commission.

(3)(A) Any person failing to appear or to produce the books, records, or documents subpoenaed by the commission shall be guilty of contempt.

(B) The person shall be punished by the circuit court upon petition being filed with the circuit court by the commission in the same manner as provided by law for punishment of contempt of the circuit court.

(e)(1) The commission shall perform the duties prescribed in this chapter.

(2) For such purposes, the commission may promulgate and enforce reasonable and necessary rules and regulations.

(f) Members of the commission shall not exercise police powers, nor shall the appointment qualify a commissioner as a law enforcement officer as defined in § 12-9-102.

History. Acts 1945, No. 231, § 2; 1949, No. 157, § 1; 1953, No. 74, § 1; 1981, No. 45, § 2; 1981, No. 540, §§ 10, 11; A.S.A. 1947, §§ 42-401.1, 42-402, 42-403.2, 42-403.3; Acts 2001, No. 1697, § 1; 2005, No. 666, § 1.

Amendments. The 2005 amendment substituted "shall" for "is directed to" in (a); inserted the subdivision (1) and (3) designations in (a) and made related changes; deleted "or demotion" at the end of present (a)(1); and inserted (a)(2).

CASE NOTES

ANALYSIS

Disciplinary Action.

Employment Discrimination.

Disciplinary Action.

While the commission's actions on review may effectively enhance a punishment ordered by the director, such action is within the bounds of the statutory authority; inherent in the authority to disapprove disciplinary action is the obvious effect of enhancing or diminishing the action taken by the director. *Tuck v. Arkansas State Police Comm'n*, 282 Ark. 39, 665 S.W.2d 276 (1984).

The commission acted within the bounds of its statutory authority in disapproving the director's proposed disciplinary actions against officer and making a

recommendation for termination. *Tuck v. Arkansas State Police Comm'n*, 282 Ark. 39, 665 S.W.2d 276 (1984).

Employment Discrimination.

In an employment discrimination action brought by a black applicant against the state police, there was insufficient evidence to support plaintiff's contention that case had been settled by an agreement between his attorney and the deputy attorney general whereby the plaintiff would be employed by the state police as soon as he passed an examination, irrespective of any requirement of a background investigation and irrespective of the requirement that the hiring of state police personnel was the responsibility of the director, where no written stipulation was entered into with respect to such an

agreement, and where the deputy attorney general had no authority to make the settlement. *Ward v. Arkansas State Police*, 493 F. Supp. 1315 (E.D. Ark. 1980), rev'd, 653 F.2d 346 (8th Cir. 1981).

Where the evidence was overwhelming that unsuccessful applicant for a position with the Arkansas State Police had a dismal employment history and unfavor-

able credit history, a prima facie case of race discrimination could not stand absent evidence that the police department's personnel actions were a pretext for racial discrimination. *Ward v. Arkansas State Police*, 539 F. Supp. 1116 (E.D. Ark. 1982), aff'd, 714 F.2d 62 (8th Cir. 1983).

Cited: *Lewellen v. Raff*, 649 F. Supp. 1229 (E.D. Ark. 1986).

12-8-104. Director.

(a)(1)(A) After conferring with the members of the Arkansas State Police Commission, the Governor shall appoint a Director of the Department of Arkansas State Police who shall be the executive and administrative head of the Department of Arkansas State Police and shall receive a salary as fixed by law.

(B) The Director of the Department of Arkansas State Police shall serve at the pleasure of the Governor.

(2) The Director of the Department of Arkansas State Police shall be of good moral character and a resident and a qualified elector of the State of Arkansas.

(3) In addition to all other qualifications contained in this section, the Director of the Department of Arkansas State Police, at the time of appointment to the position of Director of the Department of Arkansas State Police, shall either:

(A) Be a college graduate with at least a bachelor's degree in criminology, business administration, or a related field;

(B) Have graduated from a standard high school or vocational school and have eight (8) years' previous experience in law enforcement or a related field with considerable supervisory and administrative experience; or

(C) Have at least ten (10) years' experience in law enforcement.

(b) The Director of the Department of Arkansas State Police shall determine the number of other officers and patrol personnel to be employed by the Department of Arkansas State Police, and they shall be paid salaries according to rank, not exceeding the salaries provided.

(c) The Director of the Department of Arkansas State Police shall promote such rules and regulations as are necessary for the efficient operation of the Department of Arkansas State Police and for the enforcement of such duties as are prescribed in this chapter.

(d) The Director of the Department of Arkansas State Police shall keep the books and records of the Department of Arkansas State Police, which shall be audited as the books and accounts of other state departments.

(e) An annual report to the Governor and a biannual report to the General Assembly showing the activities, number of arrests, amounts collected by the Department of Arkansas State Police, and disposition of all cases shall be made by the Director of the Department of Arkansas State Police.

(f)(1) The Director of the Department of Arkansas State Police shall have supervision and control for the purpose of discipline and proper management of all the members and employees of the Department of Arkansas State Police.

(2)(A) The Director of the Department of Arkansas State Police may designate that some or all employees of the Department of Arkansas State Police be trained pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security concerning the enforcement of federal immigration laws on federal and interstate highways in the State of Arkansas.

(B) The amount spent for training employees of the Department of Arkansas State Police under the memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security shall be paid in accordance with the provisions of § 12-8-118.

(3)(A) Upon request of the Director of State Highways and Transportation, the Director of the Department of Arkansas State Police may designate certified law enforcement officers from the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department to be trained under the terms of the memorandum of understanding described in subdivision (f)(2) of this section.

(B) The amount spent for training certified law enforcement officers from the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall be borne by the Arkansas State Highway and Transportation Department.

(g) The Director of the Department of Arkansas State Police may establish such divisions within the ranks of the Department of Arkansas State Police as he or she may deem necessary and proper.

(h) Whenever in the Director of the Department of Arkansas State Police's discretion the action is necessary for the efficient operation of the Department of Arkansas State Police, the Director of the Department of Arkansas State Police may:

(1) Transfer, assign, and reassign from one (1) division to another division any member of the Department of Arkansas State Police or other employee of the Department of Arkansas State Police; or

(2)(A) Subject to the approval of the commission, promote or demote in rank any member of the Department of Arkansas State Police.

(B) However, any demotion pursuant to subdivision (h)(2)(A) of this section shall be for nondisciplinary reasons.

(i) Due to the exacting and special duties of the Director of the Department of Arkansas State Police, he or she may draw an expense allowance in an amount not to exceed six hundred dollars (\$600) per month.

(j)(1) Subject to the provisions of subsection (f) of this section, the Director of the Department of Arkansas State Police may negotiate the terms of a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United

States Department of Homeland Security concerning the enforcement of federal immigration laws.

(2)(A) The memorandum of understanding described in subdivision (j)(1) of this section must be signed on behalf of the State of Arkansas by the Director of the Department of Arkansas State Police, the Governor, and the Director of Law Enforcement Standards and Training.

(B) Prior to the signing provided for by subdivision (j)(2)(A) of this section, the memorandum of understanding shall be reviewed by the Legislative Council.

(k) The Director of the Department of Arkansas State Police shall implement or assist other entities to develop and implement a public service campaign concerning racial profiling and may utilize brochures, flyers, or public service announcements.

History. Acts 1945, No. 231, §§ 4, 14, 21; 1968 (1st Ex. Sess.), No. 65, § 1; A.S.A. 1947, §§ 42-404, 42-414, 42-421; Acts 1987, No. 1037, § 13; 1989 (1st Ex. Sess.), No. 285, § 11; 2001, No. 750, § 1; 2001, No. 1697, § 2; 2005, No. 665, § 1; 2005, No. 907, § 1; 2005, No. 2136, § 2; 2007, No. 1048, § 1.

Amendments. The 2005 amendment by No. 665, in (h), inserted “Whenever in the director’s discretion the action is necessary for the efficient operation of the department”, inserted the subdivision (1) and (2)(A) designations and made related changes, and added (2)(B).

The 2005 amendment by No. 907 substituted “Director of the Department of

Arkansas State Police” for “director” and “Department of Arkansas State Police” for “department” throughout; substituted “years” for “years of” in (a)(3)(B) and (C); inserted the subdivision (1) designation in (f); inserted (f)(2) and (f)(3); substituted “he or she” for “director” in (g); rewrote (h); substituted “he or she may” for “the director is authorized to” in (i); and added (j).

The 2005 amendment by No. 2136 added (k).

The 2007 amendment substituted “shall implement or assist other entities to develop and implement” for “may implement” in (k).

CASE NOTES

Residency Requirement.

Appointee who lived out of state seven years before his appointment was not qualified for appointment as Director of the Department of Arkansas State Police,

even though he owned real estate in Arkansas during all seven years and intended to return. *Hogan v. Davis*, 243 Ark. 763, 422 S.W.2d 412 (1967) (decision prior to 1968 amendment).

12-8-105. Officers and members — Oath.

(a) Before entering upon their duties, all members and officers of the Department of Arkansas State Police shall take oath as now provided by law for public officials.

(b) The Director of the Department of Arkansas State Police shall take the additional oath that he or she will not be either directly or indirectly interested in any purchase made by or for the department.

(c) Any violation of oath shall constitute perjury and upon conviction shall be punished accordingly.

(d) The oath provided for in this section shall be filed in duplicate, the original filed with the department and a copy with the Secretary of the Arkansas State Police Commission.

History. Acts 1945, No. 231, § 14;
A.S.A. 1947, § 42-414; Acts 2001, No.
1697, § 3.

12-8-106. Department of Arkansas State Police — Duties and powers — Restrictions — Municipal police barred from patrolling certain highways.

(a)(1) It shall be the duty of the Department of Arkansas State Police to:

(A) Patrol the public highways, make arrests, and enforce the laws of this state relating to motor vehicles and the use of the state highways;

(B) Establish, maintain, and enforce a towing rotation list to assist in clearing highways of motor vehicles which have been involved in accidents or abandoned;

(C) Assist in the collection of delinquent motor vehicle license taxes and the collection of gasoline and other taxes that are required by law; and

(D) Determine when, if possible, a person or persons are the cause of injury to any state highway or other state property and arrest all persons criminally responsible for injury to any state highway or other state property and bring them before the proper officer for trial.

(2) The Director of the Department of Arkansas State Police may promulgate necessary rules and regulations to carry out the purpose and intent of subdivision (a)(1)(B) of this section.

(b) The department shall be conservators of the peace and as such shall have the powers possessed by police officers in cities and county sheriffs in counties, except that the department may exercise such powers anywhere in this state.

(c) The department shall have the authority to establish a Crimes Against Children Division, either through transfer or by contract, to conduct child abuse investigations, to administer the Child Abuse Hotline, and, when consistent with regulations promulgated by the department, to provide training and technical assistance to local law enforcement in conducting child abuse investigations.

(d) The police officers shall have all the power and authority of the State Fire Marshal and shall assist in making investigations of arson, § 5-38-301, and such other offenses as the director may direct and shall be subject to the call of the circuit courts of the state and the Governor.

(e) However, this chapter shall not be construed so as to take away any authority of the regularly constituted peace officers in the state, but the department shall cooperate with them in the enforcement of the criminal laws of the state and assist such officers either in the enforcement of the law or apprehension of criminals.

(f) Nothing in this chapter shall be construed as to authorize any officer of the department to serve writs unless they are specifically directed to the department, or an officer thereof, by the issuing authority.

(g) No officer or member of the department shall ever be used in performing police duties on private property in connection with any strike, lockout, or other industrial disturbance.

(h)(1)(A) Municipal police are prohibited from patrolling controlled-access facilities except as may be authorized by the director.

(B) The director may withdraw any previously issued authorization for municipal police to patrol controlled-access facilities.

(C)(i) The director shall promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to establish criteria for granting or withdrawing authorization for municipal police to patrol controlled-access facilities.

(ii) In adopting the rules described in subdivision (h)(1)(C)(i) of this section, the director at a minimum shall take into consideration the following factors:

(a) Public safety;

(b) Training of the municipal police;

(c) Size of the municipal police force;

(d) Financial impact;

(e) Abuse of police power; and

(f) The types of roadways or highways that are controlled-access facilities for purposes of this section.

(2) Municipal police may patrol any service roads that are within their jurisdiction situated adjacent to controlled-access facilities.

(3) Nothing in this subsection shall prohibit a municipal police officer from responding to an accident or other emergency on a controlled-access facility.

History. Acts 1945, No. 231, §§ 7, 8; 1963, No. 133, § 1; A.S.A. 1947, §§ 42-407, 42-408; Acts 1987, No. 509, § 1; 1997, No. 1240, § 7; 2001, No. 254, § 1; 2001, No. 441, § 1; 2001, No. 1697, § 4; 2007, No. 371, § 1.

Amendments. The 2007 amendment inserted "patrolling" preceding "certain" in the section heading; added the subsection designated (h)(1)(A); substituted "controlled-access facilities" for "limited access highways" in (h)(1)(A); added (h)(1)(B) and (h)(1)(C); substituted "controlled-access facilities" for "limited access highways" in (h)(2); and substituted "controlled-access facility" for "limited access highway" in (h)(3).

Cross References. Accident report

forms for traffic accidents prepared by department, § 27-53-206.

Arkansas State Criminal Records Act, intent of, § 12-12-1502.

Authority of Medicaid Fraud Protection Unit, § 12-8-507.

Dissemination of criminal history information, § 12-12-1504.

Drivers' examinations conducted by, § 27-16-705.

Highways, roads, and streets, § 27-64-101 et seq.

Implementation of Arkansas State Criminal Records Act, § 12-12-1512.

Municipal police departments, § 14-52-101 et seq.

Reports of motor vehicle accidents made to, § 27-53-201 et seq.

CASE NOTES**ANALYSIS**

Extraterritorial Authority.
Investigatory Stop of Automobiles.

Extraterritorial Authority.

Given that the statutory grant of authority to the state police in subsection (b) is equivalent to that possessed by municipal police officers and county sheriffs, a request for assistance by an Arkansas State Police Trooper is sufficient to give rise to extraterritorial arrest authority to a local law enforcement officer. *White v. State*, 41 Ark. App. 170, 850 S.W.2d 34 (1993).

City police officer lacked the authority under Arkansas law to make traffic stops and arrests on the Interstate. Nevertheless, because he had probable cause to arrest for the offense of reckless driving committed in his presence, no Fourth Amendment violation occurred, with the result that the arrestee's 42 U.S.C.S. § 1983 cause of action failed as a matter of law. *Rose v. City of Mulberry*, 533 F.3d 678 (8th Cir. 2008).

Investigatory Stop of Automobiles.

Officer held justified in stopping vehicle to investigate reason for slow speed and to determine age of operator. *Perez v. State*, 260 Ark. 438, 541 S.W.2d 915 (1976).

12-8-107. Arrests and detentions.

(a) If any officer of the Department of Arkansas State Police delivers an arrested person to a county jail for detention, it shall be the duty of the jailer to receive the prisoner.

(b) The department officer may notify the county sheriff or prosecuting officer of the county in which the crime was committed of the arrest and detention of the prisoner and make such lawful disposition of the prisoner as the department officer is directed to do by the county sheriff or prosecuting officer.

History. Acts 1945, No. 231, § 8; A.S.A. 1947, § 42-408; Acts 2001, No. 1697, § 5.

12-8-108. Security of Governor, capitol building, etc.

(a) The Department of Arkansas State Police shall be responsible for the safety and security of the:

- (1) Governor and his or her family;
- (2) Lieutenant Governor and his or her family;
- (3) Governor's Mansion and mansion grounds; and
- (4) State Capitol building and grounds.

(b) The department is authorized to assign officers of the department in such numbers and to such locations as is necessary to carry out the responsibility imposed on the department by this section.

History. Acts 1973, No. 422, § 1; A.S.A. 1947, § 5-914.1.

12-8-109. Police protection for statewide functions.

(a) The Department of Arkansas State Police shall provide police protection, commensurate with the available personnel and resources

of the department which are not required for other activities, benefiting any statewide function or similar activities sponsored or conducted by:

- (1) A state agency, board, or commission;
- (2) A state-supported college or university;
- (3) A private nonprofit association or organization on public property; or
- (4) Statewide athletic events under the auspices of the public schools.

(b) For the purposes of this section, the statewide functions for which the department may provide police protection at the Arkansas Livestock Showgrounds shall include the Annual State Livestock Show held at the showgrounds, and statewide athletic contests in which the public schools of this state participate which are held at the showgrounds.

History. Acts 1973, No. 430, § 1; A.S.A. 1947, § 42-407.1.

12-8-110. Deputizing citizens in emergency.

Any Department of Arkansas State Police officer shall have the authority in case of emergency to call upon and deputize any reputable citizen of the state for assistance whenever it is deemed necessary for the proper enforcement of the law.

History. Acts 1945, No. 231, § 13; ing to assist law enforcement officer, § 5-54-109.
A.S.A. 1947, § 42-413.

Cross References. Penalty for refus-

12-8-111. Cooperation among agencies.

(a) It shall be the duty of the Department of Arkansas State Police and its officers to cooperate with other law enforcement agencies of this state in the investigation and apprehension of criminals and the prevention of crime within the state and to use every means at their disposal in disseminating information that will more effectively expedite the detection of crime and the apprehension and conviction of criminals and promote the highest possible degree of efficiency in the enforcement of the criminal and traffic laws of the state.

(b) The law enforcement agencies of the state shall furnish to the department such information as they may have or shall hereafter acquire upon request of the Director of the Department of Arkansas State Police relating to crime and criminals and otherwise cooperate with the department in the enforcement of the criminal and traffic laws of this state.

History. Acts 1945, No. 231, §§ 10, 12; A.S.A. 1947, §§ 42-410, 42-412; Acts 2001, No. 1697, § 6.
Cross References. Crime prevention generally, § 12-11-101 et seq.

12-8-112. Headquarters — Bureau of Identification and Information.

(a) The Department of Arkansas State Police shall maintain headquarters and an Identification Bureau which shall be located at the State Capitol or elsewhere in the City of Little Rock.

(b) The department may establish district headquarters in other parts of the state if it is found to be necessary for the better enforcement of the provisions of this chapter. The Director of the Department of Arkansas State Police shall have the authority to assign the personnel for the district headquarters when designated.

History. Acts 1945, No. 231, § 11; A.S.A. 1947, § 42-411; Acts 2003, No. 1473, § 25.

Publisher's Notes. Acts 1961, No. 12, § 1, provided that the State Police Headquarters, in Warren, Bradley County, Ar-

kansas, would be designated a permanent facility in the memory of the late Honorable Carroll C. Hollensworth and that the Arkansas State Police Commission should maintain it as a permanent district headquarters of the Arkansas State Police.

12-8-113. Drug Abuse Enforcement Unit — Hot line.

(a) The Director of the Department of Arkansas State Police is directed to establish a Drug Abuse Enforcement Unit and assign sufficient supervisory, clerical, and enforcement personnel to carry out the duties and responsibilities of that unit as defined by the Uniformed Controlled Substances Act, §§ 5-64-101 — 5-64-510.

(b)(1) The unit shall operate a “drug abuse hot line” to allow citizens to use a toll-free in-watts telephone line to report to the Department of Arkansas State Police information regarding possible violations of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, and other provisions of Arkansas law relating to unlawful use of drugs.

(2) The department shall encourage citizen involvement in combating drug-related crimes by publicizing the existence of the drug abuse hot line.

History. Acts 1975 (Extended Sess., 1976), No. 1017, § 20; A.S.A. 1947, § 42-404.1; Acts 1989, No. 859, § 1.

12-8-114. Legal counsel and advisors.

(a) The Attorney General shall be the legal representative and advisor of the Arkansas State Police Commission, the Department of Arkansas State Police, and the Director of the Department of Arkansas State Police.

(b) However, the director, with the approval of the Attorney General and Governor, may employ other counsel when in the Attorney General's and Governor's judgment it is necessary for the proper enforcement of the provisions of this chapter and the efficient operation of the department.

(c) However, this chapter shall not be construed as relieving the prosecuting attorneys from any duties imposed upon them by law.

History. Acts 1945, No. 231, § 16;
A.S.A. 1947, § 42-416.

12-8-115. Physicians and surgeons.

(a) The Director of the Department of Arkansas State Police may designate one (1) physician and surgeon in each district of the state who shall be the physician and surgeon of the Department of Arkansas State Police within and for the district.

(b)(1) The physician and surgeon shall conduct the physical examinations required by this chapter and give medical treatment to any member or officer of the department for injuries received while in the performance of official duty.

(2) The physician and surgeon shall be given honorary commissions by the director and shall serve without pay.

History. Acts 1945, No. 231, § 26;
A.S.A. 1947, § 42-426.

12-8-116. Motor vehicles.

(a)(1) All automobiles, motorcycles, or other vehicles of any nature owned, used, and operated by the Department of Arkansas State Police shall be exempt from the payment of any licenses, fees, and charges required by the laws of this state for the operation of the vehicles upon the public highways of this state.

(2) The Director of the Department of Arkansas State Police and the Director of the Department of Finance and Administration shall adopt identification tags or other insignia which shall be attached to the vehicles by the officers, members, and employees of the Department of Arkansas State Police, for which tag or insignia no charge shall be made or collected.

(b) The Department of Arkansas State Police is granted authority to purchase used vehicles for use in confidential assignments and drug investigations.

History. Acts 1945, No. 231, § 25;
1983, No. 537, § 9; A.S.A. 1947, §§ 42-409.1, 42-425.

12-8-117. Purchasing evidence.

Upon approval by the Chief Fiscal Officer of the State, a warrant may be drawn against the State Treasury for the amount up to but not to exceed the appropriated amount and deposited in a bank account for the purpose of purchasing evidence.

History. Acts 1981, No. 540, § 8; A.S.A. 1947, § 42-420.1.

12-8-118. Payment of salaries and expenses.

The salaries and expenses provided for in this chapter shall be paid by warrant upon a voucher properly drawn by the Director of the Department of Arkansas State Police and paid out of any funds now available for the payment of salaries and expenses of the Department of Arkansas State Police from the Department of Arkansas State Police Fund or any other fund as provided by law.

History. Acts 1945, No. 231, § 14; A.S.A. 1947, § 42-414.

Cross References. Department of Arkansas State Police Fund, § 19-6-404.

12-8-119. Police training school.

(a) The Director of the Department of Arkansas State Police may establish, maintain, and conduct a police training school and may admit to the training school police officers and judicial officers of the various political subdivisions of the State of Arkansas.

(b) The director may prescribe all rules and regulations necessary for the proper functioning and operating of the school.

History. Acts 1945, No. 231, § 17; A.S.A. 1947, § 42-417.

Cross References. Law Enforcement Training Academy, § 12-9-201 et seq.

12-8-120. Background investigations.

(a) The Department of Arkansas State Police is authorized to charge a fee, not to exceed twenty dollars (\$20.00), for each background investigation requested of and conducted by the department.

(b) The background investigation fee shall be collected by the department and deposited into the State Treasury as special revenue to the credit of the Department of Arkansas State Police Fund.

History. Acts 1993, No. 508, § 14; 2001, No. 1697, § 7.

Cross References. Department of Arkansas State Police Fund, § 19-6-404.

12-8-121. Use of state uniform, patch, or logo prohibited.

(a) It shall be prohibited for any law enforcement agency, private security firm, corporation, partnership, or individual to wear a uniform in the same design and specific color scheme as the Department of Arkansas State Police.

(b) No law enforcement agency, private security firm, corporation, partnership, or individual may use the Arkansas State Police uniform or patch, nor may the Arkansas State Police logo or the terms "Arkansas State Police", "Arkansas State Trooper", or "Arkansas State Troopers" be used or otherwise displayed for the endorsement of any product, business, or purpose without the express written permission of the Director of the Department of Arkansas State Police.

(c) Nothing in this section shall prohibit uniforms or commercial concerns from reproducing these items for department use, nor the public display of the uniform, patch, or logo when it relates to official governmental business.

History. Acts 1995, No. 935, §§ 1-3; 2001, No. 1094, § 1.

12-8-122. [Repealed.]

Publisher's Notes. This section, concerning the replacement of motor vehicles by the Department of Arkansas State Po-

lice, was repealed by Acts 2003, No. 1609, § 17. This section was derived from Acts 1995, No. 1154, § 11.

12-8-123. [Repealed.]

A.C.R.C. Notes. This section was specifically repealed by Acts 2005, No. 194, § 1. Pursuant to Acts 2005, No. 1962, § 119, the amendments to this section by Acts 2005, No. 1962, § 23 are superseded by Acts 2005, No. 194, § 1.

Publisher's Notes. This section, con-

cerning accepting surplus United State Department of Defense property, was repealed by Acts 2005, No. 194, § 1. The section was derived from the following sources: Acts 1995, No. 462, § 1; 2001, No. 1697, § 8.

12-8-124. [Repealed.]

Publisher's Notes. This section, concerning replacement of motor vehicles, was repealed by Acts 2001, No. 1422,

§ 16. The section was derived from Acts 1997, No. 853, § 13.

SUBCHAPTER 2 — POLICE OFFICERS

SECTION.

- 12-8-201. Members of police force — Selection.
- 12-8-202. Qualifications of members.
- 12-8-203. Probationary period.
- 12-8-204. Tenure — Removal, suspension, or discharge.
- 12-8-205. Political activities.
- 12-8-206 — 12-8-209. [Repealed.]
- 12-8-210. Insurance — Medical and hospital.

SECTION.

- 12-8-211. [Repealed.]
- 12-8-212. Death benefits.
- 12-8-213. Equipment and uniforms.
- 12-8-214. Award of pistol and purchase of shotgun upon retirement or death.
- 12-8-215. Additional salary payments.

Cross References. Retirement of State Police, § 24-6-201 et seq.

Scholarships for children of law enforcement officers, § 6-82-501 et seq.

Effective Dates. Acts 1945, No. 231, § 28: Mar. 20, 1945. Emergency clause provided: "It having been ascertained and determined by the General Assembly that on account of the widespread disregard for

the traffic laws of the state and the rules and regulations governing the same as a result of the establishment of many large war plants and military posts in the State of Arkansas, together with the enormous increase of traffic caused by the war, which has created conditions at and around such war plants and military posts creating a condition upon the highways of

this state which, in order to efficiently operate the Department of Arkansas State Police, make it necessary that the same be departmentalized and organized in such manner that the personnel of said department can be assigned and directed in a more efficient manner and because of the hazards to life and limb as a result of the disregard for the laws making such conditions dangerous to the health, peace, and safety of the people of Arkansas an emergency is hereby declared to exist and this act being necessary for the preservation of the peace, health, and safety of the citizens of this state and for the traveling public, this act shall take effect and be in full force after its passage and approval."

Acts 1959, No. 91, § 5: Feb. 24, 1959. Emergency clause provided: "It is hereby found and declared by the General Assembly of Arkansas that under the present law there is no adequate protection or compensation for the families and dependents of members of the State Police and its divisions who have lost their lives in the course of employment, and that it is urgent that such protection and compensation be provided. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 636, § 3: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1975 is essential to the operation of the agency for which the appropriation in this act is provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1975 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1975."

Acts 1975 (Extended Sess., 1976), No. 1017, § 23: Jan. 27, 1976. Emergency clause provided: "It is hereby determined by the Seventieth General Assembly,

meeting in extended session, that appropriations and funding authorized originally in Act 915 of 1975 are insufficient for normal operating of current programs; that the separation of various functions of the Arkansas State Police into different governing acts has proven inconvenient, and that the collection of the various segments of the State Police under one act shall result in more efficient organization. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1981, No. 12, § 4: Feb. 2, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is currently no law specifically authorizing the State Police Commission to award a retiring officer the handgun carried by the officer during his service and there has been some concern regarding the commission's practice of making such awards; that the award of a handgun to a retiring officer is effective in maintaining good morale among the officers of the State Police and thereby promotes effective and efficient law enforcement; that this act is designed to give specific authority to the commission to make such awards and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 540, § 18: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the

public peace, health, and safety shall be in full force and effect from and after July 1, 1981.”

Acts 1981, No. 700, § 3: Mar. 24, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that present law requires the State Police Commission to hear within thirty (30) days from the date of filing an appeal, all appeals from state policemen regarding disciplinary actions taken by the Director of the State Police; that the commission meets only once a month and therefore the current law places an undue burden on the commission; and that this act is necessary to grant the commission a reasonable time within which to hear such appeals. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 836, § 11: July 1, 1985. Emergency clause provided: “It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1985.”

Acts 1985, No. 951, § 5: July 1, 1985.

Acts 1987, No. 1037, § 16: July 1, 1987. Emergency clause provided: “It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the

effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987.”

Acts 1989 (1st Ex. Sess.), No. 285, § 15: July 1, 1989. Emergency clause provided: “It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989.”

Acts 1991, No. 1099, § 25: July 1, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991.”

Acts 1993, No. 508, § 22: July 1, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly, that the Consti-

tution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1999, No. 1378, § 23: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the

effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

Acts 2003, No. 1609, § 24: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

CASE NOTES

Suits Against Officers.

Members of the Arkansas State Police are state officers and therefore can be sued only in the official residence of the

Arkansas State Police, which is Pulaski County. *Downey v. Toler*, 214 Ark. 334, 216 S.W.2d 60 (1948).

12-8-201. Members of police force — Selection.

(a) The Director of the Department of Arkansas State Police shall appoint all members of the police force, subject to approval of the Arkansas State Police Commission, and the director shall select the clerical and stenographic force of the Department of Arkansas State Police.

(b) The commission shall promulgate rules and regulations setting forth the minimum qualifications for employment as a department police officer and prescribing the manner of examination of applicants for the position.

(c) The director shall receive all applications for positions as department officers and submit them to the commission for examination as to the physical fitness and mental qualifications of the applicants and for

such other examinations as provided for by the commission's rules and regulations.

(d) All applications and examinations shall be in writing and shall be kept as a permanent file by the commission for not less than five (5) years.

(e)(1) A list containing the names of all applicants who possess the necessary qualifications as determined by the commission shall be certified to the director.

(2) From this list, the director shall make the final selection for the appointments, and any vacancy occurring in the department shall be filled from this list.

History. Acts 1945, No. 231, §§ 5, 6; A.S.A. 1947, §§ 42-405, 42-406; Acts 2001, No. 1697, § 9.

Publisher's Notes. In addition to enacting the general and permanent provisions codified in this section, Acts 1945, No. 231, § 5, provided that all members of the Department of Arkansas State Police who held the rank of captain, lieutenant, sergeant, or patrolman on December 1,

1944, would be commissioned by the director immediately after the act became effective (March 20, 1945), with the same rank they held on December 1, 1944, and that they would have full credit under the provisions of the act pertaining to retirement and disability benefits and civil service for service performed as a member of the Arkansas State Police or Arkansas State Rangers.

CASE NOTES

Employment Discrimination.

In employment discrimination action, evidence was insufficient to support plaintiff's contention that case had been settled by an agreement between his attorney and the deputy attorney general whereby the plaintiff would be employed by the state police as soon as he passed an examination, irrespective of any requirement of a background investigation and irrespective of the requirement that the hiring of state police personnel was the responsibility of the director, where no written stipulation was entered into with respect to such an agreement, and where the deputy attorney general had no authority to make the settlement. *Ward v.*

Arkansas State Police, 493 F. Supp. 1315 (E.D. Ark. 1980), rev'd, 653 F.2d 346 (8th Cir. 1981).

Where unsuccessful applicant for position with Arkansas State Police had dismal employment history and unfavorable credit history, a prima facie case of race discrimination could not stand absent evidence that the police department's personnel actions were a pretext for racial discrimination. *Ward v. Arkansas State Police*, 539 F. Supp. 1116 (E.D. Ark. 1982), aff'd, 714 F.2d 62 (8th Cir. 1983).

Cited: *Seal v. Pryor*, 504 F. Supp. 599 (E.D. Ark. 1980); *Ward v. Arkansas State Police*, 539 F. Supp. 1116 (E.D. Ark. 1982).

12-8-202. Qualifications of members.

(a)(1)(A) All applicants for positions as police officers of the Department of Arkansas State Police shall be citizens of the United States.

(B) However, the applicants must become citizens of the State of Arkansas in order to commence employment.

(2) Any applicant shall be employed strictly upon an efficiency basis irrespective of race, gender, religion, or political affiliation.

(b) No person shall be eligible for a position as a commissioned member of the department who:

- (1) Has been convicted of a felony in any state or federal court;
- (2) Is prohibited by state or federal law from possessing a weapon; or
- (3) Is known to be a person of immoral character.

(c) Police officers of the department shall not be appointed as patronage or political favor.

History. Acts 1945, No. 231, § 6; A.S.A. 1947, § 42-406; Acts 1997, No. 380, § 1; 2001, No. 1697, § 10.

CASE NOTES

Employment Discrimination.

Where unsuccessful applicant for position with Arkansas State Police had dismal employment history and unfavorable credit history, a prima facie case of race discrimination could not stand absent evidence that the police department's person-

nel actions were a pretext for racial discrimination. *Ward v. Arkansas State Police*, 539 F. Supp. 1116 (E.D. Ark. 1982), *aff'd*, 714 F.2d 62 (8th Cir. 1983).

Cited: *Seal v. Pryor*, 504 F. Supp. 599 (E.D. Ark. 1980).

12-8-203. Probationary period.

(a)(1) Each person who is selected as a member of the Department of Arkansas State Police shall be a probationer for a period of one (1) year from his or her date of hire.

(2) A probationer may be discharged by the Director of the Department of Arkansas State Police with the approval of the Arkansas State Police Commission with or without cause.

(b) The probationary period shall not apply to a person who has already served a probationary period.

History. Acts 1945, No. 231, § 6; 1981, No. 700, § 1; A.S.A. 1947, § 42-406; Acts 2001, No. 1697, § 11; 2003, No. 1041, § 1; 2005, No. 667, § 1.

Amendments. The 2005 amendment inserted the subdivision (1) and (2) designations in (a); substituted "from his or her

date of hire" for "after completion of the department recruit academy and prescribed field training program and" in present (a)(1); substituted "A probationer" for "during that time" in present (a)(2); and substituted "already" for "theretofore" in (b).

CASE NOTES

Cited: *Seal v. Pryor*, 504 F. Supp. 599 (E.D. Ark. 1980).

12-8-204. Tenure — Removal, suspension, or discharge.

(a) The members of the Department of Arkansas State Police shall hold their offices until and unless removed for cause.

(b) Should the Director of the Department of Arkansas State Police deem it necessary to remove, suspend, discharge, demote, or transfer for disciplinary reasons any department officer, the director shall do so by written notice.

(c)(1) Any department officer so removed, suspended, discharged, demoted, or transferred shall have the right of appeal to the Arkansas State Police Commission, provided that notice of the appeal shall be lodged with the commission within ten (10) days after notice to the officer of his or her discharge, removal, suspension, demotion, or disciplinary transfer.

(2) When so filed, the appeal shall be heard and determined by the commission within a reasonable time from the date the appeal is filed with the commission.

(d)(1) Provided the appeal is perfected within thirty (30) days from the date of the final order made by the commission, an appeal may be taken to the Pulaski County Circuit Court from any order of the commission discharging, removing, suspending, demoting, or transferring for disciplinary reasons any member of the department force.

(2) The appeal shall be heard by the court without the introduction of any further testimony.

History. Acts 1945, No. 231, § 6; 1981, No. 700, § 1; A.S.A. 1947, § 42-406; Acts 2001, No. 1697, § 12.

CASE NOTES

Hearing.

Where a dismissed state trooper sought an injunction to prevent the State Police Commission from barring the press from his hearing, it was actually a suit for mandamus rather than a petition for injunctive relief. *Arkansas State Police Comm'n v. Davidson*, 252 Ark. 137, 477 S.W.2d 852 (1972).

The Freedom of Information Act, § 25-19-101 et seq., required that the hearing of testimony, as distinguished from a discussion or consideration by the State Police Commission, must be held in public. *Arkansas State Police Comm'n v. Davidson*, 253 Ark. 1090, 490 S.W.2d 788 (1973).

Cited: *Seal v. Pryor*, 504 F. Supp. 599 (E.D. Ark. 1980).

12-8-205. Political activities.

(a) The members of the Department of Arkansas State Police shall be prohibited from engaging in any partisan political or election campaign activities during hours when they are performing work for the department.

(b)(1) The members of the department shall not be at any time detailed to perform any work pertaining to political activities affecting either a candidate or measures.

(2) The members of the department shall not display any political banners, posters, or literature on any department or state government offices, buildings, or other facilities.

(3) Department vehicles shall not display any political bumper stickers or decals and shall not be used during or after working hours to promote or assist the political campaign of any person or political issue.

(c) The members of the department shall not be required or counseled to make, solicit, or prescribe contributions toward and for any political campaign of whatsoever nature.

(d) The members of the department may participate or assist in any political campaign of any candidate or measure so long as the participation or assistance is rendered on the member's own time and department or state government property is not involved.

(e) The members of the department shall not publicly and openly espouse the candidacy of any person or measure in their official capacity as members of the department.

(f) It is declared to be the intention of the General Assembly to encourage members of the department to participate in the election process so long as the participation occurs while they are off-duty and are on their own time.

(g)(1) The violation of these provisions shall be sufficient for the removal of any member of the department force.

(2) However, nothing in this section shall interfere with the rights of any member of the department to vote for any candidate or upon any issues as his or her reason and conscience may dictate.

History. Acts 1945, No. 231, § 6; A.S.A. 1947, § 42-406; Acts 1997, No. 257, § 1.

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Balancing Interests.

Violations.

Constitutionality.

This section is not substantially overbroad or impermissibly vague and is, therefore, constitutional on its face. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

Where the Governor had issued a directive informing state employees of their right to participate in political activities while off duty and not using state equipment, and this directive was posted in state police troop headquarters, discipline of troopers for off duty activities violated their rights guaranteed under the Due Process Clause of the Fourteenth Amendment. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

This section is not so vague that people of common intelligence must necessarily guess at its meaning; indeed, whatever problems may exist with this section, it is impractical to suggest that it fails to give

adequate warning of the types of prohibited activities or the consequences for engaging in such. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

This section is not substantially overbroad or impermissibly vague and is, therefore, constitutional on its face; however, under certain circumstances, disciplinary action taken against troopers for violation of this section violated troopers' rights guaranteed under the Due Process Clause of the Fourteenth Amendment. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

In General.

Subsections (d) through (f) of this section indicate that political activity, even during off duty hours, is prohibited. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

The restrictions imposed by this section favor no particular party, group, or points of view, but apply equally to all types of political activities therein described. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

This section is penal in nature, in that it makes no provision for a trooper to be

merely suspended or fined, but states that violation of the statute is sufficient for removal. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

This section serves several valid and important interests, among those being to guarantee troopers' job security, free from the vicissitudes of the election process; to avoid the appearance of political partisanship on the part of the Arkansas State Police; and to promote a harmonious working relationship between the State Police, citizens, and political officials throughout the State. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

Until now it has evidently been the judgment of Arkansas' legislature, executive, and citizens that participation in political campaigns and related activities by Arkansas State Troopers should be restricted. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

Balancing Interests.

A state trooper is often the most conspicuous representative of the state government to a large percentage of the popu-

lation, particularly those residing in rural communities who may view the trooper as a symbol of stability and authority; accordingly, in balancing the interests of the plaintiffs and the interest of the State under this section, the Court found the balance weighed in favor of the State. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

Violations.

Under customary procedure, complaints alleging violations of this section would be reviewed by the State Police Director under two circumstances: one situation occurs when the troop captain determines the complaint cannot be handled at troop level; the other situation occurs when an officer is unhappy with the decision of the troop captain or the staff disciplinary board and appeals the decision directly to the director. *Wicker v. Goodwin*, 813 F. Supp. 676 (E.D. Ark. 1992).

Cited: *Seal v. Pryor*, 504 F. Supp. 599 (E.D. Ark. 1980).

12-8-206 — 12-8-209. [Repealed.]

Publisher's Notes. Sections 12-8-206 — 12-8-208, concerning troopers first class, corporals, and state police operators, were repealed by Acts 2001, No. 1697, §§ 13-15. Section 12-8-209, concerning salaries, expenses, and allowances for police officers, was repealed by Acts 2003, No. 1609, § 21. The sections were derived from the following sources:

12-8-206. Acts 1975 (Extended Sess., 1976), No. 1017, § 13; 1985, No. 836, § 6; A.S.A. 1947, § 42-430.1; Acts 1987, No. 1037, § 9; 1989 (1st Ex. Sess.), No. 285, § 9.

12-8-207. Acts 1981, No. 540, § 17; 1985, No. 836, § 6; A.S.A. 1947, § 42-421.1; Acts 1987, No. 1037, § 9; 1989 (1st Ex. Sess.), No. 285, § 9.

12-8-208. Acts 1965, No. 29, § 1; A.S.A. 1947, § 42-433.

12-8-209. Acts 1945, No. 231, § 6; 1981, No. 540, § 7; 1985, No. 519, § 1; A.S.A. 1947, §§ 42-406, 40-406.1; Acts 1991, No. 1099, § 17; 1999, No. 1332, § 1; 1999, No. 1378, § 14; 2001, No. 1697, § 16.

12-8-210. Insurance — Medical and hospital.

(a)(1) The Department of Arkansas State Police is authorized and directed to obtain a policy or contract of medical and hospital insurance or to establish a self-insurance fund in lieu thereof to provide medical and hospital insurance for all uniformed employees of the department.

(2) The department shall pay the premium, fee, or other costs for the policy or contract or payments into a self-insurance fund from funds appropriated to the department for personal service matching or which may be specifically appropriated for that purpose.

(b) The department is authorized to provide hospitalization and medical services coverage under a group health insurance program or may in lieu thereof provide coverage for hospitalization and medical insurance services under a self-insurance program established by the department for the spouses and dependents of uniformed personnel of the department and to pay the premium thereon or payments into the self-insurance fund from funds appropriated for that purpose.

(c) In the event that the department, acting pursuant to a resolution adopted by the Arkansas State Police Commission therefor, exercises the option to establish a self-insurance program, this program shall provide hospitalization and medical services coverage for uniformed employees of the department and for the spouses and dependents of uniformed personnel of the department as authorized in this section and shall be operated in accordance with policies, rules, procedures, and benefits prescribed by the commission.

(d) Members of the department who retire and receive retirement benefits under the State Police Retirement System after July 1, 1985, shall be eligible to participate in the group health self-insurance program established by the commission for uniformed personnel and for their spouses and dependents in the same manner and under the same conditions as provided in §§ 21-5-410 — 21-5-412, which authorize retired state employees receiving retirement benefits under the Arkansas Public Employees' Retirement System to participate in the state employees' hospitalization and medical insurance program.

History. Acts 1971, No. 243, § 1; 1975, No. 636, § 1; 1985, No. 951, §§ 1-3; A.S.A. 1947, §§ 42-434 — 42-434.2; Acts 2001, No. 1697, § 17.

A.C.R.C. Notes. Acts 2009, No. 1284, § 20, provided: "The Department of Arkansas State Police shall report monthly to the Governor, the Chief Fiscal Officer of the State and to the Arkansas Legislative Council or Joint Budget Committee regarding the activity and condition for the uniformed employee health insurance plan. The report shall include, but not limited to, the beginning reserve fund balance, contributions made during the month, claims paid, and the ending fund balance of the month. In the event it is determined that the cost to adequately maintain the uniform employee health insurance plan is not feasible within the existing resources available to the department, the 87th General Assembly shall study the feasibility and desirability of discontinuing the self-insurance program

and instead provide medical and hospital insurance to uniform employees through the public employees insurance program.

"The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010."

Publisher's Notes. Acts 1985, No. 951, § 3, provided, in part, that if the Arkansas State Police Commission elected to establish a self-insurance fund, retired employees of the Department of Arkansas State Police who were then retired and drawing benefits under the State Police Retirement System and were then participating in the State Employees Hospitalization and Medical Insurance Program could within ninety (90) days after July 1, 1985, exercise an option to participate in the group health insurance program established by the Arkansas State Police Commission for uniformed personnel or to continue to participate in the state employees' hospitalization and medical insurance program.

12-8-211. [Repealed.]

Publisher's Notes. This section, concerning liability insurance, was repealed by Acts 2003, No. 1041, § 2. The section

was derived from Acts 1971, No. 332, § 1; A.S.A. 1947, § 42-435.

12-8-212. Death benefits.

(a)(1)(A) When any police officer of the Department of Arkansas State Police shall have lost his or her life in the course of employment, then upon satisfactory proof of that fact made to the Arkansas State Police Commission, a death benefit in the sum of twenty-five thousand dollars (\$25,000) shall be paid to the spouse of the deceased officer.

(B) In case no spouse survives the officer, the death benefit shall be distributed equally among the officer's children.

(2) The sum of twenty-five thousand dollars (\$25,000) shall be paid from the Department of Arkansas State Police Fund.

(b) As used in this section, "in the course of employment" means at any time when an officer is on duty as a police officer or is performing an act ordinarily performed by a police officer although the officer is not actually on duty at the time.

(c) Nothing contained in this section shall be construed to limit or extinguish the right of any officer or the officer's survivors to any other benefits provided by law.

History. Acts 1959, No. 91, §§ 1-3; A.S.A. 1947, §§ 42-427 — 42-429; Acts 2001, No. 1697, § 18.

Cross References. Department of Arkansas State Police Fund, § 19-6-404.

Payment to dependents of police officers

killed in the line of duty, § 21-5-701 et seq.

Survivor's benefits for survivors of officers killed in line of duty while not member of retirement system, § 24-6-218.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Arkansas Law Survey, Baker, Workers' Compensation, 9 U. Ark. Little Rock L.J. 213.

12-8-213. Equipment and uniforms.

(a) Such motorcycles, automobiles, and other vehicles, equipment, and supplies as may be necessary for the proper and efficient operation of the Department of Arkansas State Police and as may be necessary for the proper enforcement of this chapter shall be furnished to the officers and patrol personnel by the department.

(b) The officers and patrol personnel shall wear and display upon their person a metal badge or other insignia as the director of the department shall require, bearing the words "Arkansas State Police".

(c) All such patrol personnel and officers shall wear such uniforms at such times and places as shall be designated and required by the Director of the Department of Arkansas State Police.

History. Acts 1945, No. 231, § 9; A.S.A. 1947, § 42-409.

12-8-214. Award of pistol and purchase of shotgun upon retirement or death.

(a) When a Department of Arkansas State Police officer retires from service or dies while still employed with the department, in recognition of and appreciation for the service of the retiring or deceased officer, the Arkansas State Police Commission may award the pistol carried by the officer at the time of his or her death or retirement from service to:

- (1) The officer; or
- (2) The officer's spouse, if the spouse is eligible under applicable state and federal laws to possess a firearm.

(b) When a department officer retires from service or dies while still employed with the department, in recognition of and appreciation for the service of the retiring or deceased officer, the commission may allow the purchase of the shotgun used by the officer while on duty at the time of his or her death or retirement from service at fair market value as determined by the commission by:

- (1) The officer; or
- (2) The officer's spouse, if the spouse is eligible under applicable state and federal laws to possess a firearm.

History. Acts 1981, No. 12, § 1; A.S.A. 1947, § 42-465; Acts 2003, No. 547, § 1; 2009, No. 155, § 1.

A.C.R.C. Notes. Acts 2009, No. 155, § 2, provided: "The act applies retroactively to a Department of Arkansas State

Police officer who retired from service or died while employed by the department on or after January 1, 2008, but before the effective date of this act."

Amendments. The 2009 amendment rewrote (b).

12-8-215. Additional salary payments.

(a) In the event that sufficient revenues in the judgment of the Director of the Department of Arkansas State Police exist, the Department of Arkansas State Police is authorized to make additional salary payments from such funds to those employees who have attained law enforcement certification above the basic certificate level, as defined by the Arkansas Commission on Law Enforcement Standards and Training.

(b) It is the intent of this section that such payment shall be optional, at the discretion of the director, dependent on sufficient revenues, and shall not be implemented using funds specifically set aside for other programs within the department.

(c)(1) Employees shall be eligible for all or a portion of additional salary payments scheduled as follows:

- (A) General certificate — three hundred dollars (\$300) annually;
 - (B) Intermediate certificate — six hundred dollars (\$600) annually;
 - (C) Advanced certificate — nine hundred dollars (\$900) annually;
- and

(D) Senior certificate — one thousand two hundred dollars (\$1200) annually.

(2) Payment of the funds may be made monthly, quarterly, semianually, or annually depending upon the availability of revenues and shall be restricted to the following classifications:

- (A) Director of the Department of Arkansas State Police;
- (B) Arkansas State Police lieutenant colonel;
- (C) Arkansas State Police major;
- (D) Arkansas State Police captain;
- (E) Arkansas State Police lieutenant;
- (F) Arkansas State Police sergeant;
- (G) Arkansas State Police corporal;
- (H) Arkansas State Police trooper, first class;
- (I) Arkansas State Police trooper;
- (J) Manager, Diversion Investigation Unit; and
- (K) Drug diversion investigator.

(d) Payments made under this section shall be considered part of the employee's regular income and subject to all applicable withholding required by law.

History. Acts 1993, No. 508, § 15; chapter" in other provisions of this chapter may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this

SUBCHAPTER 3 — DEPARTMENT OF ARKANSAS STATE POLICE COMMUNICATIONS EQUIPMENT LEASING ACT

SECTION.

- 12-8-301. Title.
- 12-8-302. Legislative findings and determinations.
- 12-8-303. Definitions.
- 12-8-304. Construction — Applicability of other acts.
- 12-8-305. Arkansas State Police Commission — Additional powers.
- 12-8-306. Submission of contracts and proposals.

SECTION.

- 12-8-307. Lease fund — Pledged revenues.
- 12-8-308. Lease fund — Payment of costs — Tax exemption.
- 12-8-309. Lease fund — Investments.
- 12-8-310. Lease fund — Expiration of provisions.

Effective Dates. Acts 1985, No. 817, § 11: Apr. 4, 1985. Emergency clause provided: "The Seventy-Fifth General Assembly hereby finds and declares the present communications equipment for the department is not adequate and that there is an urgent need that modern communications equipment be acquired in order that

the department may continue to carry out its law enforcement responsibilities in an effective manner. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be effective upon its passage and approval."

12-8-301. Title.

This subchapter shall be known and may be cited as the “Department of Arkansas State Police Communications Equipment Leasing Act”.

History. Acts 1985, No. 817, § 1; A.S.A. 1947, § 42-468.

12-8-302. Legislative findings and determinations.

(a) The General Assembly finds:

(1) That the existing communications equipment used by the Department of Arkansas State Police:

(A) Has poor radio coverage;

(B) Has the problems of public monitoring and lack of user privacy; and

(C) Is subject to unauthorized usage and interference from other parties; and

(2) That portions of the existing communications equipment are:

(A) Worn out;

(B) Obsolete and expensive to repair and maintain; and

(C) Specially designed mobile and portable units having limited utility.

(b) The General Assembly determines that adequate and modern communications equipment for the enhancement of statewide law enforcement is essential to the safety and welfare of the people of this state.

(c) It is legislatively determined that adequate and modern communications equipment needs to be acquired in order to replace the existing communications equipment and that the most feasible and least expensive way of financing the communications equipment is by authorizing a lease-purchase agreement under the authority of this subchapter.

History. Acts 1985, No. 817, § 2; A.S.A. 1947, § 42-469.

12-8-303. Definitions.

As used in this subchapter:

(1) “Acquire” means to acquire by lease, lease-purchase, or otherwise, construct, repair, alter, install, restore, or place on any land or in any building or motor vehicle any communications equipment by negotiation or bidding upon such terms and conditions as are determined by the Arkansas State Police Commission to be in the best interests of the Department of Arkansas State Police and that will most effectively serve the purposes of this subchapter;

(2) “Commission” means the Arkansas State Police Commission, which is the commission created by § 12-8-102, or any successor agency;

(3) "Communications equipment" means public safety communication equipment and systems, including buildings, structures, furnishings, and fixtures used directly for public safety purposes in connection with the operation thereof, including, but not limited to, radio broadcast and receiving, telegraph, television, teletype, microwave transmission, and similar systems of communication by voice or by conveyance of words, signals, or images by electronic or electrical means;

(4) "Cost", as applied to communications equipment, means all costs of such equipment and, without limiting the generality of the foregoing, shall include the following:

(A) All costs of the acquisition of any such communications equipment and all costs incident or related thereto;

(B) The cost of architectural, engineering, legal, and related services, including:

(i) The cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue; and

(ii) All other expenses necessary or incident to planning, providing or determining the need for or the feasibility and practicability of such communications equipment; and

(C) All costs paid or incurred in connection with the financing of such communications equipment, including:

(i) Out-of-pocket expenses;

(ii) The cost of financing, legal, accounting, financial advisory and consulting fees, expenses, and disbursements;

(iii) The cost of any policy of insurance, letter of credit, or guaranty;

(iv) The cost of printing, engraving, and reproduction services; and

(v) The cost of the initial or acceptance fee of any trustee or paying agent;

(5) "Department" means the Department of Arkansas State Police, created by § 12-8-101, and any successor agency;

(6) "Director" means the Director of the Department of Arkansas State Police;

(7) "Lease or lease-purchase agreement" means the contract entered into by the commission to acquire the communications equipment;

(8) "Lease payments" means payments to be made by the department from pledged revenues or other legally available sources to pay costs of communications equipment; and

(9) "Pledged revenues" means all revenues authorized by § 12-8-307 to be pledged for the security and payment of the lease.

History. Acts 1985, No. 817, § 3; A.S.A. 1947, § 42-470.

12-8-304. Construction — Applicability of other acts.

(a)(1) This subchapter shall be liberally construed to accomplish the intent and purposes of this subchapter and shall be the sole authority required for the accomplishment of these purposes.

(2) It shall not be necessary to comply with the general provisions of other laws dealing with public commodities and public facilities and their acquisition, construction, leasing, encumbering, or disposition if:

(A) The Arkansas State Police Commission shall comply with §§ 25-4-107 [repealed] and 25-4-108 before acquiring any communications equipment authorized under this subchapter; and

(B) The commission submits any invitation or request for bids, quotes, or proposals and the procedures to be used in evaluating them to the State Procurement Director for review and written approval prior to any obligation being incurred by the commission or the Department of Arkansas State Police as the obligation relates to any acquisition authorized and defined by this subchapter.

(b) The enumeration of any object, purpose, power, manner, method, and thing in this subchapter shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

(c) To the extent that there is a conflict between the provisions of this subchapter and §§ 12-8-101 — 12-8-107, 12-8-110 — 12-8-112, 12-8-114 — 12-8-116, 12-8-118, 12-8-119, 12-8-201 — 12-8-205, 12-8-213, and 12-12-103, the provisions of this subchapter shall govern.

History. Acts 1985, No. 817, §§ 7, 10; A.S.A. 1947, §§ 42-474, 42-476; Acts 2005, No. 1962, § 24.

A.C.R.C. Notes. Section § 25-4-107 referred to in subdivision (a)(2)(A) of this section was repealed by Acts 2009, No. 648, 5. Under § 25-4-105, the Department of Information Systems is now responsible for advising state agencies with respect to information technology contracts and

agreements.

Amendments. The 2005 amendment substituted “of this subchapter” for “thereof” in (a)(1); inserted “in this subchapter” in (b); in (c), deleted “This subchapter shall be the complete and sole authority for the accomplishment of the purposes hereof” at the beginning, and deleted “12-8-209 [repealed]”; and made minor stylistic changes.

12-8-305. Arkansas State Police Commission — Additional powers.

(a) In addition to the powers, purposes, and authorities set forth elsewhere in this subchapter or in other laws, the Arkansas State Police Commission may:

(1)(A) Acquire, construct, repair, renovate, alter, maintain, and equip communications equipment for use by the Department of Arkansas State Police.

(B) However, the communications equipment acquired under the authority of this subchapter shall not be used for the transmission of telephonic messages which bypass the public telephone network;

(2) Contract for the lease, lease-purchase, or purchase of the communications equipment on such terms and conditions as are specified by this subchapter and approved by the Director of the Department of Arkansas State Police with the consent of the commission;

(3) Provide for the payment of the cost of acquisition from any legally available source or sources, including, without limitation, the revenues authorized by § 12-8-307, funds appropriated and made available under §§ 12-8-101 — 12-8-107, 12-8-110 — 12-8-112, 12-8-114 —

12-8-116, 12-8-118, 12-8-119, 12-8-201 — 12-8-205, 12-8-213, and 12-12-103, and funds, if any, appropriated for the communications equipment;

(4) Purchase, acquire, lease, lease-purchase, or rent, and receive bequests or donations of, or otherwise acquire, sell, trade, or barter any real, personal, or mixed property and convert such property into money or other property;

(5) Contract and be contracted with;

(6) Apply for, receive, accept, and use any moneys and property from the United States Government, any agency, any state or governmental body or political subdivision, any public or private corporation or organization of any nature, or any individual;

(7) Invest and reinvest any of its moneys in securities, obligations, banking arrangements, or investment agreements selected by the commission;

(8) Make and execute all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this subchapter;

(9) In connection with the acquisition and financing of the costs of communication equipment, employ attorneys, accountants, underwriters, and financial advisors and such other advisors, consultants, and agents as may be necessary in its judgment, and fix their compensation;

(10) Procure insurance against any loss in connection with its property and other assets, in such amounts and from such insurers as it may deem advisable, including the power to pay premiums on any such insurance;

(11) Procure insurance or guaranties from any public or private entities, including any department, agency, or instrumentality of the United States and to secure payment of any lease entered into under the authority of this subchapter, including the power to pay premiums on any such insurance or guaranty;

(12) Arrange for the use of such communications equipment by any federal, state, or local governmental agency or any other person, from time to time, as any of such communications equipment is not needed by the department and collect fees and charges, as the commission determines to be reasonable, in connection with the use of any communications equipment by any other person;

(13) Cooperate with and exchange services and information with any federal, state, or local governmental agency; and

(14) Take such other action, not inconsistent with law, as may be necessary, convenient, or desirable to carry out the powers, purposes, and authorities set forth in this subchapter and carry out the intent of this subchapter.

(b) All the powers, purposes, and authorities set forth in subsection (a) of this section, except those relating to the contracting for the lease, purchase, or lease-purchase of the communications equipment, may be carried out by the department.

History. Acts 1985, No. 817, § 4; A.S.A. 1947, § 42-471; Acts 2005, No. 1962, § 25. **Amendments.** The 2005 amendment deleted “12-8-209 [repealed]” in (a)(3).

12-8-306. Submission of contracts and proposals.

The Arkansas State Police Commission shall submit any contract, agreement, or proposal, as authorized by this subchapter, to the Legislative Council prior to any obligation being incurred by the commission for the Legislative Council’s advice and counsel.

History. Acts 1985, No. 817, § 6; A.S.A. 1947, § 42-473; Acts 2005, No. 1962, § 26. **Amendments.** The 2005 amendment deleted “Arkansas Communications Study Committee and to the” preceding the first occurrence of “Legislative Council,” and substituted “the Legislative Council’s” for “their.”

12-8-307. Lease fund — Pledged revenues.

(a)(1) The lease payments and other costs relating to the communications equipment shall be secured solely by a lien on and pledge of all revenues derived from the following fees and charges fixed and imposed by § 27-16-801, or pursuant to any subsequent similar laws, which are confirmed, ratified, fixed, and imposed, and which are as follows:

- (A) An operator’s or a motorcycle driver’s license for two (2) years — six dollars (\$6.00);
- (B) A chauffeur’s license for two (2) years — ten dollars (\$10.00);
- (C) A motor scooter license for not more than two (2) years — two dollars (\$2.00);
- (D) An operator’s license or a motorcycle driver’s license for four (4) years — twelve dollars (\$12.00); and
- (E) A chauffeur’s license for four (4) years — twenty dollars (\$20.00).

(2) The pledging of such revenues, collectively the “pledged revenues”, is authorized.

(b) On the first day of the month next succeeding the execution of any leasing agreement authorized by this subchapter, all pledged revenues are specifically declared to be cash funds restricted in their use and dedicated to be used solely as authorized in this subchapter.

(c)(1) On the first day of the month next succeeding the execution of the lease authorized by this subchapter and so long as lease payments remain to be paid, the pledged revenues shall not be deposited into the State Treasury and shall not be subject to legislative appropriation.

(2) The pledged revenues shall be deposited into a bank or banks selected by the Department of Arkansas State Police, as and when received by the Commissioner of Motor Vehicles, the Office of Motor Vehicle, the Department of Arkansas State Police, the Arkansas State Police Commission, the Director of the Department of Finance and Administration, or any other state agency.

(3) The pledged revenues shall be deposited to the credit of a fund created and designated as the Department of Arkansas State Police Communications Equipment Lease Fund, referred to in this subchapter as the lease fund.

(d) So long as there are remaining any lease payments to be made, the General Assembly may eliminate or change the driver's license fees referred to as pledged revenues within this section, under § 27-16-801, or any subsequent similar law, but only on condition that there is always maintained in effect and made available for the payment of lease payments sources of revenue which produce revenues at least sufficient in amount to provide for the payment when due of the lease payments.

History. Acts 1985, No. 817, § 5; A.S.A. 1947, § 42-472.

12-8-308. Lease fund — Payment of costs — Tax exemption.

(a)(1) Payments to cover the costs under the lease agreement shall be paid from the Department of Arkansas State Police Communications Equipment Lease Fund on a monthly basis.

(2) If and so long as all payments to cover the costs under the lease agreement are properly made on the last day of each fiscal quarter, the pledged revenues remaining in the Department of Arkansas State Police Communications Equipment Lease Fund in excess of a reserve of thirty percent (30%) of a fiscal quarter's requirements shall be withdrawn from the lease fund and deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund.

(b) So long as any lease payments remain to be paid, all moneys in the Department of Arkansas State Police Communications Equipment Lease Fund shall be used solely for the payment of the lease payments, and other costs in connection with the lease, with the maintenance of necessary funds and reserves, except that the lease may provide for the withdrawal, for other lawful purposes, of surplus moneys, as defined in the lease.

(c) The interest portion of any costs of acquiring communications equipment authorized by this subchapter shall be exempt from state, county, and municipal income, inheritance, and estate taxes.

History. Acts 1985, No. 817, §§ 5, 8; A.S.A. 1947, §§ 42-472, 42-475.

Cross References. Department of Arkansas State Police Fund, § 19-6-404.

12-8-309. Lease fund — Investments.

Nothing in §§ 12-8-307 — 12-8-310 is intended to prohibit the Department of Arkansas State Police from investing moneys deposited into the Department of Arkansas State Police Communications Equipment Lease Fund, as provided in this subchapter.

History. Acts 1985, No. 817, § 5; A.S.A. 1947, § 42-472.

12-8-310. Lease fund — Expiration of provisions.

- (a) The provisions of §§ 12-8-307 — 12-8-309 shall expire upon payment of the final costs authorized under the lease agreements mentioned in this subchapter.
- (b) Any balances remaining in the Department of Arkansas State Police Communications Equipment Lease Fund shall be deposited into the State Treasury to the credit of the Department of Arkansas State Police Fund as a nonrevenue receipt.

History. Acts 1985, No. 817, § 5; A.S.A. 1947, § 42-472.

SUBCHAPTER 4 — ARKANSAS SPEED TRAP LAW

SECTION.	SECTION.
12-8-401. Title.	12-8-403. Inquiry to determine abuse.
12-8-402. Definitions.	12-8-404. Sanctions.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-3 may not apply to this subchapter which was enacted subsequently.

12-8-401. Title.

This subchapter may be known as and cited as the “Arkansas Speed Trap Law”.

History. Acts 1995, No. 855, § 1.

12-8-402. Definitions.

- As used in this subchapter:
- (1) “Abusing police power” means the exercise of police power to enforce criminal and traffic laws for the principal purpose of raising revenue for the municipality and not for the purpose of public safety and welfare;
 - (2) “Affected highway” means any highway which is part of the state highway system; and
 - (3) “Affected municipality” means any city of the second class or incorporated town through which passes an affected highway.

History. Acts 1995, No. 855, § 2; 1997, No. 211, § 1.

12-8-403. Inquiry to determine abuse.

- (a)(1) Upon the request of the prosecuting attorney of any judicial district in which an affected municipality is located, the Director of the

Department of Arkansas State Police is authorized to investigate and determine whether any municipality is abusing police power.

(2)(A) The investigation shall require the affected municipality to submit a certified record of all fines, costs, citations, municipal expenditures, and percentage of citations that are written for ten miles per hour (10 m.p.h.) or less than the posted speed.

(B) The records may be over a reasonable period of time as requested by the Department of Arkansas State Police, but in no event shall there be less than ninety (90) days worth of documentation.

(C)(i) The affected municipality shall submit requested records within thirty (30) days, unless an extension for submission is approved, and shall cooperate with all other aspects of the investigation.

(ii) Failure to comply with any requirement of this section shall result in automatic sanctions.

(b) It shall be presumed that the affected municipality is abusing police power upon a finding that:

(1) The amount of revenue produced by fines and costs from traffic offenses that are misdemeanors or violations of state law or local ordinance for which citations are written by the police department of the affected municipality occurring on the affected highways exceeds thirty percent (30%) of the affected municipality's total expenditures, less capital expenditures and debt service, in the preceding year; or

(2) More than fifty percent (50%) of the summons written for the traffic offense of speeding that is a misdemeanor or a violation of state law or local ordinance in the affected municipality are written for speed limit violations that are ten miles per hour (10 m.p.h.) or less than the posted limit.

History. Acts 1995, No. 855, § 3; 1997, No. 842, § 1; 2001, No. 1425, § 1.

12-8-404. Sanctions.

(a)(1) Upon the completion of an inquiry, the Director of the Department of Arkansas State Police shall forward all information to the prosecuting attorney of the affected municipality, who will make the determination as to whether the municipality has abused its police power.

(2) The prosecuting attorney shall have the power to issue the following sanctions:

(A) Order that a municipality abusing police power cease patrolling any or all affected highways; or

(B) Order that all or any part of future fines and court costs received from traffic law violations or misdemeanor cases where the location of the offense is an affected highway be paid over to a county fund for the maintenance and operation of the public schools located in the county in which the municipality is located.

(b) Any violation of the sanction ordered under subdivision (a)(2)(A) of this section by any police officer shall constitute a Class A misdemeanor for each citation or summons issued or misdemeanor arrest made in violation of the prosecuting attorney’s order.

History. Acts 1995, No. 855, §§ 4, 5; 1997, No. 842, § 2; 2001, No. 1425, § 2; 2005, No. 1962, § 27. substituted “prosecuting attorney’s” for “director’s” in (b).
Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

Amendments. The 2005 amendment

SUBCHAPTER 5 — CRIMES AGAINST CHILDREN DIVISION

- SECTION.
12-8-501. Legislative intent.
12-8-502. Transfer of powers and duties — Sections of unit — Sharing of information.
12-8-503. Transfer of powers and duties — Executive orders — Contracts.
12-8-504. Transition plan — Continuous service.

- SECTION.
12-8-505. Child abuse hotline and investigations.
12-8-506. Oversight.
12-8-507. Abuse of patients receiving medicaid.
12-8-508. Provision of information and assistance.
12-8-509. Additional reporting required.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-3 may not apply to this subchapter which was enacted subsequently.
Cross References. Child Maltreatment Act, § 12-18-101 et seq.
Preambles. Acts 2005, No. 1176 contained a preamble which read: “WHEREAS, the Arkansas Child Maltreatment Act, Arkansas Code § 12-12-501 et seq., is the law that allows doctors and hospital staff to report child abuse and neglect to the Arkansas State Police Child Abuse Hotline; and
“WHEREAS, the Arkansas State Police Child Abuse Hotline is a twenty-four-hour toll-free service that triggers the initiation of an investigation of child maltreatment; and
“WHEREAS, currently, the Arkansas State Police Child Abuse Hotline will not accept reports related to newborn children being born with an illegal substance present in their system as a result of the pregnant mother’s use before birth of an illegal substance or with a health problem as a result of the pregnant mother’s use before birth of an illegal substance; and
“WHEREAS, in order for the newborn child to be protected by the Arkansas Child Maltreatment Act and receive ser-

vices, the Arkansas State Police Child Abuse Hotline must accept reports of this nature; and
“WHEREAS, this act is necessary to clarify the law so that the Arkansas State Police Child Abuse Hotline can accept reports of this nature and so that the newborn children can be provided services to protect their health and safety.
“NOW THEREFORE, ...”
Effective Dates. Acts 1997, No. 1240, § 12: Apr. 9, 1997. Emergency clause provided: “It is found and determined by the General Assembly that the powers and duties of the Department of Human Services in regard to the child abuse hotline and child abuse investigations will be shifted to the Arkansas State Police, either through transfer or by contract; that such transfer or contract could occur prior to or at the beginning of the next fiscal year; and that such transfer or contract cannot occur prior to or at the beginning of the next fiscal year unless this emergency clause is adopted. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Gov-

error, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 1176, § 6: Mar. 24, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that, currently, the Arkansas State Police Child Abuse Hotline will not accept reports related to newborn children being born with an illegal substance present in their blood or urine as a result of the pregnant mother's use before birth of an illegal substance or with a health problem as a result of the pregnant mother's use before birth of an illegal substance; that in order for the newborn child to be protected by the Ar-

kansas Child Maltreatment Act and receive services, the Arkansas State Police Child Abuse Hotline must accept reports of this nature; and that this act is immediately necessary to clarify the law so that the Arkansas State Police Child Abuse Hotline can accept reports of this nature and so that the newborn children can be provided services to protect their health and safety. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-8-501. Legislative intent.

(a) The General Assembly recognizes that:

(1) The state has a responsibility to provide competent and thorough child abuse investigations which are sensitive to the needs of children and families;

(2) It is difficult for caseworkers with the Department of Human Services, which is currently charged with the responsibilities of investigating child abuse and providing services to children and families, to separate their dual roles as investigators and service providers;

(3) Many studies show that child abuse investigations are compromised when these very different functions are not separated; and

(4) Child abuse is a crime and suspected child abuse should be investigated with due diligence by trained law enforcement officers.

(b) Therefore, it is declared to be the intent of this General Assembly to authorize the Department of Arkansas State Police to:

(1) Create a Crimes Against Children Division, either through transfer or by contract;

(2) Conduct investigations into severe child abuse as defined by interagency agreement; and

(3) Administer the Child Abuse Hotline.

History. Acts 1997, No. 1240, § 1; 2001, No. 441, § 2.

Cross References. Creation of the Child Abuse Hotline, § 12-18-301.

12-8-502. Transfer of powers and duties — Sections of unit — Sharing of information.

(a) When the powers and duties of the Department of Human Services in regard to the Child Abuse Hotline and child abuse investigations are transferred to the Department of Arkansas State Police or when the Department of Human Services and the Department of Arkansas State Police contract for the administration of the Child Abuse Hotline or for the Department of Arkansas State Police to conduct child abuse investigations, or both, the Department of Arkansas State Police shall establish a Crimes Against Children Division.

(b) The division shall consist of two (2) sections:

(1)(A) The Investigation Section, which shall be staffed with civilian personnel and shall be responsible for the investigation of allegations of child abuse in accordance with the Child Maltreatment Act, § 12-18-101 et seq.

(B) Unless the case involves alleged severe maltreatment, if at any point during the investigation of alleged child maltreatment the information gathered becomes sufficient for a possible criminal prosecution, then the case shall be referred for further investigation to the appropriate law enforcement agency.

(C) The Investigation Section shall complete an investigation of all cases assigned to the Investigation Section and refer the case to a local law enforcement agency or a prosecuting attorney for possible criminal prosecution; and

(2) The Child Abuse Hotline Section, which shall administer twenty-four-hour toll-free inward wide-area telephone services (INWATS) to report to the Department of Arkansas State Police information regarding possible incidents of child abuse.

(c)(1) The division shall develop and maintain statewide statistics regarding the incidence of child abuse.

(2) Each county and city law enforcement agency conducting child abuse investigations through referral from the Child Abuse Hotline shall report the status and disposition of these investigations to the division on a monthly basis.

(d)(1) If the powers and duties of the Department of Human Services in regard to the Child Abuse Hotline and child abuse investigations are transferred to the Department of Arkansas State Police, the division and the Department of Human Services shall enter into a memorandum of understanding that shall include provisions that address the sharing of information reported to the Child Abuse Hotline with the Department of Human Services when such information is necessary for the division to provide appropriate service delivery to children and families.

(2) If the Department of Human Services and the Department of Arkansas State Police contract for the administration of the Child Abuse Hotline or for the Department of Arkansas State Police to conduct child abuse investigations, or both, the contract shall include

provisions that address the sharing of information reported to the Child Abuse Hotline with the Department of Human Services when such information is necessary for the division to provide appropriate service delivery to children and families.

History. Acts 1997, No. 1240, § 2; 2001, No. 441, § 3; 2005, No. 1466, § 1; 2007, No. 703, § 7; 2009, No. 758, § 19.

A.C.R.C. Notes. Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Amendments. The 2005 amendment rewrote (b).

The 2007 amendment, in (b)(1)(B), added "Unless the case involves alleged severe maltreatment" and inserted "alleged child maltreatment"; added (b)(1)(C); and made related changes.

The 2009 amendment substituted "Child Maltreatment Act, § 12-18-101 et seq." for "Arkansas Child Maltreatment Act, § 12-12-501 et seq." in (b)(1)(A).

Cross References. Creation of the Child Abuse Hotline, § 12-18-301.

12-8-503. Transfer of powers and duties — Executive orders — Contracts.

(a)(1) The Governor shall issue an executive order transferring the powers and duties of the Department of Human Services in regard to the Child Abuse Hotline to the Department of Arkansas State Police by a type 2 transfer as defined in § 25-2-105 or the Department of Human Services and the Department of Arkansas State Police shall enter into a contract for the administration of the Child Abuse Hotline in accordance with this subchapter.

(2) Personnel transferred with the Child Abuse Hotline shall be required to meet employment standards and policies established by the Department of Arkansas State Police in order to retain their employment.

(b)(1) The Governor shall issue an executive order transferring the powers and duties of the Department of Human Services in regard to child abuse investigations to the Department of Arkansas State Police by a type 2 transfer as defined in § 25-2-105 or the Department of Human Services and the Department of Arkansas State Police shall enter into a contract for the Department of Arkansas State Police to conduct child abuse investigations in accordance with this subchapter.

(2) Personnel transferred in regard to child abuse investigations shall be required to meet employment standards and policies established by the Department of Arkansas State Police in order to retain their employment.

History. Acts 1997, No. 1240, § 3.

Cross References. Creation of the Child Abuse Hotline, § 12-18-301.

12-8-504. Transition plan — Continuous service.

(a) If a transfer of child abuse investigations occurs, any and all statutory authority, powers, duties, functions, records, authorized positions, property, unexpended balances of appropriations, allocations, or other funds of the Division of Children and Family Services of the Department of Human Services for the purposes of child abuse investigations to be transferred to the Department of Arkansas State Police shall be transferred only after the development of a transition plan that will ensure the efficient and effective transfer of the powers and duties of the Department of Human Services to the Department of Arkansas State Police so that there is continuous service delivery to and protection of the children of the State of Arkansas.

(b) If the Department of Human Services and the Department of Arkansas State Police enter into a contract for the Department of Arkansas State Police to conduct child abuse investigations, the contract shall include a transition plan that ensures continuous service delivery to and protection of the children of the State of Arkansas.

(c) The Department of Human Services and the Department of Arkansas State Police shall submit for review any transition plan developed under this section to the House Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Committee on Children and Youth.

History. Acts 1997, No. 1240, § 4; substituted “prosecuting attorney’s” for “director’s” in (b).
 2005, No. 1466, § 2.
Amendments. The 2005 amendment

12-8-505. Child abuse hotline and investigations.

The Child Abuse Hotline and child abuse investigations referred to in this subchapter shall be operated and conducted in accordance with the Child Maltreatment Act, § 12-18-101 et seq.

History. Acts 1997, No. 1240, § 5; The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.
 2009, No. 758, § 20.
A.C.R.C. Notes. Acts 2009, No. 758, § 29, provided: “Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.”
Amendments. The 2009 amendment substituted “the Child Maltreatment Act, § 12-18-101 et seq.” for “§ 12-12-501 et seq.”
Cross References. Creation of the Child Abuse Hotline, § 12-18-301.

12-8-506. Oversight.

(a)(1)(A) When the Department of Arkansas State Police assumes responsibility for the Child Abuse Hotline and child abuse investigations under this subchapter, either through transfer or by contract, an oversight system shall be created to review:

- (i) The administration of the Child Abuse Hotline;
- (ii) The conduct of child abuse investigations;
- (iii) Interagency cooperation in regard to the allocation of responsibility for various types of child abuse investigations; and
- (iv) Service delivery to children and families.

(B) The oversight system shall utilize the same criteria by which the Division of Children and Family Services of the Department of Human Services has been measured as stipulated in the settlement of *Angela R. v. State of Arkansas*.

(2) The House Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Committee on Children and Youth shall conduct the review and evaluation with the assistance of six (6) ex officio members with professional experience in the performance of activities involving child abuse and neglect, to be appointed jointly by the chairs of the House Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Committee on Children and Youth from a list of nominees submitted by the professional associations of the respective members, as follows:

- (A) One (1) ex officio member shall be a pediatrician;
- (B) One (1) ex officio member shall be a social worker;
- (C) One (1) ex officio member shall be a guardian ad litem;
- (D) One (1) ex officio member shall be a foster parent;
- (E) One (1) ex officio member shall be an educator; and
- (F) One (1) ex officio member shall be a law enforcement officer.

(b)(1) The oversight system established in subsection (a) of this section shall commence within one (1) month of the assumption of the responsibility for the Child Abuse Hotline and child abuse investigations by the Department of Arkansas State Police, either by contract or through transfer.

(2) The Department of Arkansas State Police shall submit reports regarding the administration of the Child Abuse Hotline and the conduct of child abuse investigations at least quarterly or more often as determined by the House Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Committee on Children and Youth.

History. Acts 1997, No. 1240, § 6; 2005, No. 1466, § 3.

Cross References. Creation of the Child Abuse Hotline, § 12-18-301.

Amendments. The 2005 amendment substituted "Children and Family Services" for "Youth Services" in (a)(1)(B).

12-8-507. Abuse of patients receiving medicaid.

Nothing contained in this subchapter shall limit or impair in any way the authority of the Medicaid Fraud Control Unit within the Attorney

General's office from investigating or referring for prosecution complaints of abuse and neglect of patients of health care facilities which receive medicaid funds.

History. Acts 1997, No. 1240, § 8.

12-8-508. Provision of information and assistance.

Notwithstanding a rule or regulation to the contrary, upon request of a member of the General Assembly or legislative staff or upon request of a legislative committee, the Crimes Against Children Division of the Department of Arkansas State Police shall immediately provide information requested with respect to child welfare as contemplated under the Arkansas Child Welfare Public Accountability Act, § 9-32-201 et seq.

History. Acts 2001, No. 1727, § 6; substituted "Crimes Against Children Division" for "Family Protection Unit."
2005, No. 1466, § 4.

Amendments. The 2005 amendment

12-8-509. Additional reporting required.

(a) The state agency or entity responsible for administering the twenty-four-hour toll-free Child Abuse Hotline or investigating an incident of neglect as defined under § 12-18-103(13)(B) shall:

(1) Develop and maintain statewide statistics of the incidents of neglect reported or investigated under § 12-18-103(13)(B);

(2)(A) Annually report no later than October 1 to the following:

(i) The Senate Interim Committee on Children and Youth;

(ii) The House Committee on Aging, Children and Youth, Legislative and Military Affairs;

(iii) The Senate Committee on Public Health, Welfare, and Labor; and

(iv) The House Committee on Public Health, Welfare, and Labor.

(B) The annual report under this section shall include all findings and statistics regarding incidents of neglect reported or investigated under § 12-18-103(13)(B), including, but not limited to, the following information:

(i) The age of the mother;

(ii) The type of illegal substance to which the newborn child was exposed prenatally;

(iii) The estimated gestational age of the newborn child at the time of birth; and

(iv) The newborn child's health problems; and

(3)(A) Notify each mandatory reporter who makes a call to the Child Abuse Hotline if the mandatory reporter's call is not accepted or is screened out on a subsequent Child Abuse Hotline supervisor review.

(B) The notification required under subdivision (a)(3)(A) of this section shall be made within forty-eight (48) hours, excluding weekends and holidays, after a mandatory reporter makes a call to the Child Abuse Hotline that is not accepted or is screened out on a subsequent Child Abuse Hotline supervisor review.

(b) If more than one (1) state agency or entity is responsible for administering the twenty-four-hour toll-free Child Abuse Hotline or investigating an incident of neglect as defined under § 12-18-103(13)(B), then the reporting under this section shall be a collaborative effort by all state agencies or entities involved.

History. Acts 2005, No. 1176, § 4; 2007, No. 703, § 8; 2009, No. 758, § 21.

A.C.R.C. Notes. Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Publisher's Notes. Acts 2005, No.

1176, § 1, provided: "This act shall be known and may be cited as 'Garrett's Law: To Provide Services to a Newborn Child Born with an Illegal Substance Present in the Child's System.'"

Amendments. The 2007 amendment added (a)(3) and made related changes.

The 2009 amendment substituted "§ 12-18-103(13)(B)" for "§ 12-12-503(12)(B)" in the introductory language of (a), (a)(1), (a)(2)(B), and (b).

Cross References. Creation of the Child Abuse Hotline, § 12-18-301.

Garrett's Law reports, § 12-18-305.

CHAPTER 9

LAW ENFORCEMENT OFFICER TRAINING AND STANDARDS

SUBCHAPTER.

1. COMMISSION AND ADVISORY BOARD ON STANDARDS AND TRAINING.
2. LAW ENFORCEMENT TRAINING ACADEMY.
3. AUXILIARY LAW ENFORCEMENT OFFICERS.
4. RADAR INSTRUCTORS AND OPERATORS.
5. MANAGEMENT TRAINING AND EDUCATION.
6. LAW ENFORCEMENT OFFICER EMPLOYMENT, APPOINTMENT, OR SEPARATION.

RESEARCH REFERENCES

ALR. Right of incarcerated mother to retain custody of infant in penal institution. 14 A.L.R.4th 748.

State regulation of conjugal or overnight familial visits in penal or correctional institutions. 29 A.L.R.4th 1216.

U. Ark. Little Rock L.J. Survey, Criminal Procedure, 13 U. Ark. Little Rock L.J. 349.

CASE NOTES

Cited: Barnes v. State, 305 Ark. 428, 810 S.W.2d 909 (1991).

SUBCHAPTER 1 — COMMISSION AND ADVISORY BOARD ON STANDARDS AND TRAINING

SECTION.

- 12-9-101. Legislative determinations.
- 12-9-102. Definitions.
- 12-9-103. Commission created — Members — Meetings — Director.
- 12-9-104. Commission's powers generally.
- 12-9-105. Employees.
- 12-9-106. Selection and training requirements — Exceptions.
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SECTION.

- 12-9-109. Legal counsel.
- 12-9-110. Training of civilians to file parking violations and traffic accident reports.
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- 12-9-113. Domestic violence training.
- 12-9-114. Training concerning sexual assaults.
- 12-9-115. Training for constables.

A.C.R.C. Notes. References to "this subchapter" in §§ 12-9-101 — 12-9-109 may not apply to §§ 12-9-110 — 12-9-115 which were enacted subsequently.

Effective Dates. Acts 1975, No. 452, § 13: Jan. 1, 1976.

Acts 1979, No. 642, § 3: Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law relating to minimum standards for law enforcement officers a temporary or probationary employment may not be extended beyond one year; that this has created a serious hardship in some instances and it is urgent that some provision be made for permitting the extension of such temporary or probationary employment beyond one year in unusual circumstances and that this act is designed to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 45, § 15: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the agencies, departments, and programs now performed through the Department of Public Safety could more efficiently and economically perform their respective duties and responsibilities through reorganized agencies and departments operating as separate entities; that substantial savings could be made by

eliminating the central services of the Department of Public Safety; and that the immediate passage of this act is necessary to provide for advance planning for more efficient administration after the close of the current fiscal biennium of the various public safety programs of this state. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1981."

Acts 1981, No. 427, § 8: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 89, § 6: July 1, 1983. Emergency clause provided: "It is hereby

found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1983."

Acts 1983, Nos. 131 and 135, § 6: Feb. 10, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 763, § 3: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is confusion over the authority of municipal inspectors to issue citations for the violation of municipal codes, ordinances, and regulations. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 905, § 3: Mar. 28, 1983. Emergency clause provided: "With knowledge that there are law enforcement officers presently appointed or employed in

this state who have been convicted of felony offenses and that there is ambiguity in the law with respect to what constitutes a conviction, and that the law enforcement officer is in a high position of public trust, and that this act is necessary for the protection of the public peace, health, and safety, this act shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 44, § 5: Nov. 8, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that actions by law enforcement officers are being held invalid merely because the law enforcement officers fail to meet all law enforcement standards; that as a result, prosecution of many criminals is being thwarted; that criminals should not go unpunished merely because a law enforcement officer fails to meet all standards prescribed by the State; that this Act eliminates the language which invalidates action taken by such law enforcement officers; and that this Act should go into effect immediately in order to protect the safety and welfare of the citizens of this State. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the

Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1203, § 8: Apr. 8, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Police Corps Program and Police Corps Scholarship Program, which are operated in large part under federal grants, do not conform with federal requirements and that failure to take immediate appropriate action could work irreparable harm upon the proper administration and provision of these programs. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1022, § 13: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

Acts 1999, No. 1247, § 5: Apr. 8, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that it is essential to the effective and efficient administration and enforcement of parking ordinances in municipalities that such municipalities be permitted to employ enforcement personnel who do not meet the certification requirements of the Arkansas Commission on Law Enforcement Standards or to contract for such services by noncertified enforcement personnel; that this act is designed to permit municipalities to employ or contract for the services and should be given effect immediately to enable municipalities to provide for the proper enforcement of such ordinances. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 509, § 2: Mar. 18, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current law enforcement training standards do

not require adequate training concerning sexual assault; that this bill requires such additional training; and that this bill is immediately necessary in order to provide the necessary training to our law enforcement officers as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace,

health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

CASE NOTES

Applicability.

Since this subchapter applies only to appointed officers, constables, as officers

"elected by a vote of the people," are not subject to its provisions. *Credit v. State*, 25 Ark. App. 309, 758 S.W.2d 10 (1988).

12-9-101. Legislative determinations.

The General Assembly finds and determines that:

(1) The administration of criminal justice is of statewide concern and that law enforcement is important to the health, safety, and welfare of the people of this state;

(2) The state has a responsibility to ensure effective law enforcement by establishing minimum selection, training, and educational requirements for law enforcement officers and also to encourage advanced in-service training programs; and

(3) It is in the public interest that minimum levels of education and training be developed and made available to persons seeking to become law enforcement officers and to persons presently serving as law enforcement officers.

History. Acts 1975, No. 452, § 1; A.S.A. 1947, § 42-1001n.

CASE NOTES

Cited: *City of Little Rock v. Tibbett*, 301 Ark. 376, 784 S.W.2d 163 (1990); *Johnson v. City of Kensett*, 301 Ark. 592, 787 S.W.2d 651 (1990); *Renshaw v. State*, 303 Ark. 244, 795 S.W.2d 925 (1990); *City of Pocahontas v. Huddleston*, 309 Ark. 353, 831 S.W.2d 138 (1992).

12-9-102. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Commission on Law Enforcement Standards and Training as established by § 12-9-103;

(2) "Law enforcement officer" means any appointed law enforcement officer who is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state, excluding only those officers who are elected by a vote of the people; and

(3) "Political subdivision" means any county, municipality, township, or other specific local unit of general government.

History. Acts 1975, No. 452, § 2; A.S.A. 1947, § 42-1001; Acts 1989, No. 25, § 2.

Cross References. Railroad police, § 23-12-701 et seq.

CASE NOTES

Law Enforcement Officer.

An appointed chief of police is a law enforcement officer, within the statutory definition, because he is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state. *Allen v. Titsworth*, 279 Ark. 138, 649 S.W.2d 185 (1983).

The mere fact that employees of a police department are uniformed and wear badges does not automatically convert them into law enforcement officers. *City of Pocahontas v. Huddleston*, 309 Ark. 353, 831 S.W.2d 138 (1992).

Cited: *Lamb v. State*, 21 Ark. App. 111, 730 S.W.2d 252 (1987); *Credit v. State*, 25 Ark. App. 309, 758 S.W.2d 10 (1988).

12-9-103. Commission created — Members — Meetings — Director.

(a) The Arkansas Commission on Law Enforcement Standards and Training shall consist of ten (10) members, to be appointed by the Governor with the advice and approval of the Senate.

(b)(1)(A) Two (2) members of the commission shall be chiefs of police of municipalities in Arkansas, two (2) members of the commission shall be county sheriffs of counties in this state, one (1) member shall be an officer of the Department of Arkansas State Police, two (2) members shall be appointed to represent the public, and one (1) member shall be an educator in the field of criminal justice.

(B) Each congressional district of the state must be represented on the commission, with the remaining members to be appointed from the state at large.

(2)(A) One (1) member shall not be actively engaged in or retired from law enforcement.

(B) The member under subdivision (b)(2)(A) of this section shall be:

- (i) Sixty (60) years of age and shall represent the elderly;
- (ii) Appointed from the state at large subject to confirmation by the Senate; and
- (iii) A full voting member.

(3) The person who is elected as president of the Arkansas Municipal Police Association shall be a full voting member of the commission during his or her term of office as president of the association, and his or her successors shall likewise serve as full voting members of the commission.

(c) Except for the president of the Arkansas Municipal Police Association, members shall be appointed for terms of seven (7) years or until their successors are appointed and qualified.

(d) If a vacancy occurs on the commission due to death, resignation, or for other reason, the vacancy shall be filled by appointment by the

Governor, in the same manner as provided for the initial appointment for the position, for the remainder of the unexpired portion of the term thereof.

(e) Members of the commission shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The commission shall meet at such times as may be provided by the rules of the commission, or upon call of the chair, or upon written request of any four (4) members.

(g) Upon recommendation of the commission, the Governor shall appoint the Director of Law Enforcement Standards and Training, who shall perform such duties as may be directed by the commission and who shall serve at the pleasure of the Governor.

History. Acts 1981, No. 45, § 7; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 42-701.1; Acts 1993, No. 109, § 1; 1997, No. 250, § 65; 2009, No. 205, § 1.

Publisher's Notes. In addition to enacting the general and permanent provisions codified in this section, Acts 1981, No. 45, § 7, abolished the Executive Commission on Law Enforcement Standards, which was created by Acts 1975, No. 452, § 5, and transferred all its powers, functions, duties, personnel, and funds to the Arkansas Commission on Law Enforcement Standards and Training.

It further provided that the act should not be construed so as to reduce any right which an employee of the Executive Com-

mission on Law Enforcement Standards would have under any civil service or merit system.

The terms of the members of the Arkansas Commission on Law Enforcement Training and Standards, other than the representative of the elderly, are arranged so that one (1) term expires on January 14 of each year.

Amendments. The 2009 amendment substituted "ten (10)" for "nine (9)" in (a); in (b), inserted "one (1) member shall be an officer of the Department of Arkansas State Police" in (b)(1)(A), inserted "under subdivision (b)(2)(A) of this section" in (b)(2)(B); and made related and stylistic changes.

CASE NOTES

Cited: *Lamb v. State*, 21 Ark. App. 111, 730 S.W.2d 252 (1987).

12-9-104. Commission's powers generally.

In addition to powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training elsewhere in this subchapter, the commission may:

(1)(A) Promulgate rules and regulations for the administration of this subchapter.

(B) The rules and regulations promulgated by the commission shall not go into full force and effect until the commission seeks the advice of the Legislative Council and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the Legislative Council and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor;

(2) Require the submission of reports and information by police departments within this state;

(3)(A)(i) Establish minimum selection and training standards for admission to employment as a law enforcement officer.

(ii) The standards may take into account different requirements for urban and rural areas, full-time and part-time employment, and specialized police personnel.

(B) However, the minimum selection and training standards for admission to employment as a law enforcement officer shall not apply to volunteer police auxiliary officers, to volunteer officers of county sheriffs' mounted patrols, and to honorary police officer commissions issued by appropriate police authority;

(4) Establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs of schools operated by or for the state and political subdivisions for the specific purpose of training recruits for law enforcement officers;

(5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, community colleges, and other institutions or organizations concerning the development of police training schools and programs or courses of instruction;

(6) Approve institutions and facilities to be used by or for the state or any political subdivision of the state for the specific purpose of training law enforcement officers and recruits;

(7) Adopt rules and minimum standards for schools which shall include, but not be limited to, the following:

(A) The curriculum for:

(i) Probationary police officers, which shall be offered by all certified schools, and which shall include, but shall not be limited to, courses on:

- (a) Accident investigation;
- (b) Arrest;
- (c) Civil rights;
- (d) Court testimonies;
- (e) Criminal law;
- (f) Firearms training;
- (g) First aid;
- (h) Handling of juvenile offenders;
- (i) Human relations;
- (j) Law of criminal procedure;
- (k) Law of evidence;
- (l) Physical training;
- (m) Race relations and sensitivity;
- (n) Recognition of mental conditions which require immediate assistance and methods to safeguard and provide assistance to a person in need of mental treatment;
- (o) Reports;
- (p) Search and seizure;

- (q) Statements;
- (r) Techniques of obtaining physical evidence;
- (s) Traffic control; and
- (t) Vehicle and traffic law; and
- (ii) Permanent police officers, which shall include, but shall not be limited to, refresher and in-service training in:
 - (a) Any of the courses listed in subdivision (7)(A)(i) of this section;
 - (b) Advanced courses in any of the subjects listed in subdivision (7)(A)(i) of this section;
 - (c) Training for supervisory personnel; and
 - (d) Specialized training in subjects and fields to be selected by the board;
- (B) Minimum courses of study, attendance requirements, and equipment requirements;
- (C) Minimum requirements for instructors; and
- (D) Minimum basic training requirements which a probationary police officer must satisfactorily complete before being eligible for permanent employment as a law enforcement officer;
- (8) Make and encourage studies of any aspect of police administration;
- (9) Conduct and stimulate research by public and private agencies designed to improve police administration and law enforcement;
- (10) Make recommendations concerning matters within its purview pursuant to this subchapter;
- (11) Make evaluations as may be necessary to determine if governmental units are complying with the provisions of this subchapter;
- (12) Adopt and amend bylaws, consistent with law, for its internal management and control;
- (13) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter;
- (14) Facilitate training of certified law enforcement officers pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security concerning the enforcement of federal immigration laws;
- (15) In consultation with the Arkansas Association of Chiefs of Police, develop and implement suggested selection and training requirements and nonmandatory basic and advanced levels of certification for chiefs of police; and
- (16) In consultation with the Arkansas Sheriffs' Association, develop and implement suggested training requirements and nonmandatory basic and advanced levels of certification for county sheriffs.

History. Acts 1975, No. 452, § 6; 1981, No. 427, § 4; 1983, No. 89, § 3; A.S.A. 1947, §§ 42-701.2, 42-1005; Acts 1993, No. 110, § 1; 1997, No. 179, § 8; 2005, No. 907, § 2; 2009, No. 793, § 1.

Amendments. The 2005 amendment added (14) and made related changes.

The 2009 amendment added (15) and (16).

CASE NOTES

Cited: Gilbert v. City of Little Rock, 544 F. Supp. 1231 (E.D. Ark. 1982); Lamb v. State, 21 Ark. App. 111, 730 S.W.2d 252 (1987).

12-9-105. Employees.

The Arkansas Commission on Law Enforcement Standards and Training is authorized to employ such employees as are necessary to efficiently and effectively carry out the provisions of this subchapter and as may be authorized by biennial appropriations of the General Assembly.

History. Acts 1975, No. 452, § 7; A.S.A. 1947, § 42-1006.

A.C.R.C. Notes. Regarding the reference to "biennial appropriations" in this

section, Arkansas Constitution, Amendment 86, limits appropriations of the General Assembly to one (1) fiscal year. See Arkansas Constitution, Article 5, § 29.

CASE NOTES

Cited: Lamb v. State, 21 Ark. App. 111, 730 S.W.2d 252 (1987).

12-9-106. Selection and training requirements — Exceptions.

(a)(1) The Arkansas Commission on Law Enforcement Standards and Training shall provide by rule that a person shall not be appointed as a law enforcement officer, except on a temporary or probationary basis not to exceed one (1) year, unless the person has satisfactorily completed a preparatory program of police training at a school approved by the commission.

(2)(A) A law enforcement officer who lacks the education and training qualifications or background investigation required by the commission shall not have his or her temporary or probationary employment extended beyond one (1) year, by renewal of appointment or otherwise, unless extraordinary circumstances exist in the majority opinion of the executive body of the commission.

(B) If the executive body of the commission determines under subdivision (a)(2)(A) of this section that extraordinary circumstances exist, the commission may approve an extension of temporary or probationary employment for no more than an eight-month period.

(b)(1) In addition to the requirements of subsection (a) of this section and § 12-9-104(7), the commission, by rules and regulations, shall fix such other qualifications as it deems necessary.

(2) However, no person who pleads or is found guilty of a felony shall be eligible to be appointed or certified as a law enforcement officer.

(c) The commission shall issue a certificate evidencing satisfaction of the requirements of subsections (a) and (b) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in this or another state conforming to the content and

quality required by the commission for approved education and training.

(d) Nothing in this section shall be construed to preclude any employing agency from establishing qualifications and standards for hiring, training, compensating, or promoting law enforcement officers that exceed those set by the commission.

(e)(1) Law enforcement officers already serving under full-time permanent appointment on December 31, 1977, shall not be required to meet the requirements of subsections (a) and (b) of this section as a condition of tenure or continued employment, nor shall failure of any such law enforcement officer to fulfill the requirements make him or her ineligible.

(2) Law enforcement officers employed prior to January 1, 1976, may continue their employment and participate in training programs on a voluntary or assigned basis, but failure to meet standards shall not be grounds for their dismissal or termination of employment. Subsequent termination of employment, whether voluntary or involuntary, shall not result in revocation of this exclusion status but such officers shall have the same powers, privileges, and rights and shall be subject to the same rules and restrictions as are applicable to officers whose certification is based on formal training.

(3) Personnel of law enforcement agencies whose status as to coverage under this subchapter is questionable on December 31, 1977, but who are subsequently determined to be subject thereto, shall have an effective date of compliance enforcement as set by the commission, and personnel employed prior to that date shall be excluded from mandatory compliance therewith.

History. Acts 1975, No. 452, § 8; 1979, No. 642, § 1; 1983, No. 905, § 1; A.S.A. 1947, § 42-1007; Acts 1999, No. 1472, § 1; 2009, No. 793, § 2.

Amendments. The 2009 amendment, in (a)(1), substituted “rule” for “regulation” and inserted “or probationary”; subdivided (a)(2); inserted “or background investigation” in (a)(2)(A); and in (a)(2)(B),

inserted “If the executive body of the commission determines under subdivision (a)(2)(A) of this section that extraordinary circumstances exist” and substituted “temporary or probationary employment” for “probation”; and made related and minor stylistic changes.

Cross References. County sheriff as law enforcement officer, § 12-9-112.

CASE NOTES

ANALYSIS

Constitutionality.

Bond.

Grandfather Clause.

Constitutionality.

While § 12-9-108 does not itemize the standards required, the standards are not unconstitutionally vague because they are either set out under this section in particular or as part of the commission rules.

McEntire v. State, 305 Ark. 470, 808 S.W.2d 762 (1991).

Bond.

There is no requirement under this section that officers be bonded in order to lawfully execute their duties. Dilday v. State, 300 Ark. 249, 778 S.W.2d 618 (1989).

Grandfather Clause.

Where a supervising officer testified he had been employed continuously as a full-

time police officer for the past fourteen years at various police departments, and on cross-examination stated there had been one interval of three weeks between the time he worked for two cities, but was not asked whether he was on some type of leave during this period, it could not be said that his testimony that he had been continuously employed as a policeman was in error. *King v. State*, 304 Ark. 592, 804 S.W.2d 360 (1991).

Supreme Court did not need to determine whether the trial court was clearly erroneous in finding of fact that the personnel file belonging to the arresting auxiliary officer's supervising officer contained a diploma and physical report as

required under minimum standards set by the Commission on Law Enforcement Standards and Training, because, even if it did not, the supervising officer was grandfathered in by subdivision (e)(1). *King v. State*, 304 Ark. 592, 804 S.W.2d 360 (1991).

Cited: *Smith v. State*, 278 Ark. 462, 648 S.W.2d 792 (1983); *Karr v. Townsend*, 606 F. Supp. 1121 (W.D. Ark. 1985); *Lamb v. State*, 21 Ark. App. 111, 730 S.W.2d 252 (1987); *Pipes v. State*, 22 Ark. App. 235, 738 S.W.2d 423 (1987); *Dilday v. State*, 300 Ark. 249, 778 S.W.2d 618 (1989); *Kitler v. State*, 304 Ark. 344, 802 S.W.2d 925 (1991); *City of Pochontas v. Huddleston*, 309 Ark. 353, 831 S.W.2d 138 (1992).

12-9-107. Training programs.

(a) For the purpose of this subchapter, the Arkansas Commission on Law Enforcement Standards and Training may cooperate with federal, state, and local law enforcement agencies in establishing and conducting instruction and training programs for law enforcement officers of this state, its counties, and municipalities.

(b) The commission shall establish and maintain police training programs through such agencies and institutions as the commission may deem appropriate to carry out the intent of this subchapter, including provision for training participants under twenty-one (21) years of age in the Arkansas Police Corps Scholarship Program.

(c) The commission shall work with each state agency and political subdivision that adheres to the selection and training standards established by the commission to provide allowable tuition, living, and training expenses incurred by the officers in attendance at approved training programs.

(d)(1) It is the intent of this subchapter that the expenses of attending the approved training programs established pursuant to subsection (c) of this section shall be furnished by the state through the law enforcement training academy or any other manner that may be prescribed by the commission and no cost or charge shall be made to any local political subdivision for the actual cost of the training.

(2) However, the state shall not be liable for the travel cost or any salary in connection with attending any training program.

(e) The expenses of attending training provided pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security shall be paid in accordance with the provisions of § 12-8-104.

(f) The commission shall administer the training and certification program for court security officers under the Arkansas Court Security Act, § 16-10-1001 et seq.

History. Acts 1975, No. 452, § 9; A.S.A. 1947, § 42-1008; Acts 1997, No. 1203, § 4; 2005, No. 907, § 3; 2007, No. 576, § 2.

A.C.R.C. Notes. Acts 2007, No. 576, § 3, provided: "The General Assembly recommends:

"(1) That the Supreme Court develop a comprehensive policy on security and emergency preparedness for the judicial branch of the government;

"(2) That the Supreme Court establish standards for every county for the development of a local security and emergency preparedness plan for circuit courts in the county and establish standards for every city in which a district court is located for the development of a local security and emergency preparedness plan for district courts in the city; and

"(3)(A) That the Supreme Court create a Security and Emergency Preparedness Advisory Committee.

"(B) The committee should be inclusive of judges, law enforcement officers, sheriffs, city and county executive officers, emergency preparedness officials, legislators, and others involved in providing security to the courts.

"(C) Legislative representation on the committee should be appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate."

Amendments. The 2005 amendment added (e).

The 2007 amendment added (f).

CASE NOTES

Cited: *Lamb v. State*, 21 Ark. App. 111, 730 S.W.2d 252 (1987).

12-9-108. Failure to meet qualifications — Effect — Exemptions.

(a) Actions taken by law enforcement officers who do not meet all of the standards and qualifications set forth in this subchapter or made by the Arkansas Commission on Law Enforcement Standards and Training shall not be held invalid merely because of the failure to meet the standards and qualifications.

(b)(1) Nothing in this subchapter or any requirements made by the commission shall prevent any action by a private citizen that is now authorized by law.

(2) No provision of this subchapter shall affect the deputizing of a private citizen by a law enforcement officer in a time of a disaster or emergency.

(3) Nothing in this subchapter or any other law shall prohibit inspectors and code enforcement officers of cities, towns, or counties from issuing citations for the violation of municipal or county codes, ordinances, or regulations that they are charged by their city, town, or county with the duty of enforcing.

(4)(A) Cities of the first class, cities of the second class, and incorporated towns are authorized to employ persons or to contract with private or public corporations, associations, or other entities, whether charitable, nonprofit, or for profit, that employ persons who do not meet certification requirements prescribed by the commission to enforce and execute any or all provisions of a municipal parking enforcement ordinance, including, but not limited to, the issuance of citations, the collection of fines, and any other parking enforcement process or procedure as may be established by ordinance of the municipality.

(B) Persons employed under this subdivision (b)(4) shall not carry firearms nor take any other official law enforcing action except that enumerated in subdivision (b)(4)(A) of this section.

History. Acts 1975, No. 452, § 10; 1983, No. 763, § 1; 1985, No. 580, §§ 1, 2; A.S.A. 1947, §§ 19-4912, 19-4913, 42-1009; Acts 1989 (3rd Ex. Sess.), No. 44, § 1; 1999, No. 1247, § 1; 2009, No. 204, § 1.

Publisher's Notes. Acts 1989 (3rd Ex. Sess.), No. 44, § 2, provided: "It is hereby the intent of the General Assembly by amending the minimum standards for law enforcement officials, ab initio, that actions taken by law enforcement officers

that are pending before any Court, Grand Jury, Department, Officer, Agency, Regulatory Body, Legislative Committee, or other authority of the United States, a State, or a Political Subdivision shall not be held invalid merely because of the failure to meet the standards and qualifications."

Amendments. The 2009 amendment inserted "or counties" once and "or county" twice in (b)(3), and made related changes.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Criminal Law, 12 U. Ark. Little Rock L.J. 617.

CASE NOTES

ANALYSIS

Constitutionality.
Construction.
Purpose.
Applicability.
Actions by Others.
Authority to Arrest.
Bond.
Competency as Witness.
Date of Compliance.
Exclusionary Rule.
Failure to Be Certified.
Invalid Arrest.
Police Misconduct.
Proof of Compliance.
Prosecutor's Information.
Valid Arrest.

Constitutionality.

The retroactive application of Acts 1989, No. 44, which amended subsection (a) to provide that action taken by non-qualified officers "shall not be held invalid", does not violate the ex post facto clause because: 1) it does not punish as a crime an act previously committed, which was innocent when done; 2) it does not make more burdensome the punishment for a crime, after its commission; 3) it does not alter a legal rule of evidence to receive less or different testimony than was re-

quired at the time of the commission of the offense; and 4) it does not deprive a defendant of any defense available according to at the time when the act was committed. *Ridenhour v. State*, 305 Ark. 90, 805 S.W.2d 639 (1991); *Mitchell v. State*, 306 Ark. 383, 814 S.W.2d 904 (1991).

While this section does not itemize the standards required, the standards are not unconstitutionally vague because they are either set out under § 12-9-106 in particular or as part of the commission rules. *McEntire v. State*, 305 Ark. 470, 808 S.W.2d 762 (1991).

The retroactive application of Acts 1989, No. 44 was not prohibited by the ex post facto clauses of our federal and state constitutions where defendant was arrested on February 11, 1989, and his motion to dismiss was denied on August 17, 1989, but the trial was held on October 16, 1990, and judgment was entered on October 22, 1990; therefore, the case was pending when Acts 1989, No. 44 was enacted. *Ellis v. State*, 306 Ark. 461, 816 S.W.2d 164 (1991).

Construction.

This section deals with standards for employment. It does not deal with police

conduct. *Moore v. State*, 303 Ark. 514, 798 S.W.2d 87 (1990).

Subsection (a) applies to "all of the standards," leaving no room for an interpretation that makes a distinction between employment standards and training standards. *Harshaw v. State*, 313 Ark. 51, 852 S.W.2d 318 (1993).

Purpose.

The goal of this section and the goal of the exclusionary rule are different. The goal of this section is to compel police department administrators to check the backgrounds of those seeking to become officers, and to hire only psychologically qualified persons to serve as policemen, whereas, the exclusionary rule is designed to deter unlawful police conduct and compels respect for the Fourth Amendment by removing the incentive to disregard it. *Moore v. State*, 303 Ark. 514, 798 S.W.2d 87 (1990); *Collins v. State*, 304 Ark. 587, 804 S.W.2d 680 (1991).

Applicability.

Application of section, as amended in 1989, to a case pending at the time of the amendment, was not a violation of the prohibition against ex post facto laws. *Harbour v. State*, 305 Ark. 316, 807 S.W.2d 663 (1991).

It was proper to apply this section as amended by Acts 1989, No. 44, which removed the strictures previously invalidating actions taken by officers not meeting the commission's qualifications, to cases pending at the time Act 44 was enacted. *Barnes v. State*, 305 Ark. 428, 810 S.W.2d 909 (1991).

Actions by Others.

This section provides that action taken by an unqualified person "shall be held as invalid." It does not indicate that actions taken by others should be held invalid or that an exclusionary rule should be applied. *Moore v. State*, 303 Ark. 514, 798 S.W.2d 87 (1990).

Authority to Arrest.

Section 16-81-106 and this section are repugnant in that § 16-81-106 provides that only certified law enforcement officers have the authority to make arrests, while this section provides that it does not matter whether officers are certified in order to make a valid arrest; however, that limited difference did not repeal the

authority of law enforcement officers to make arrests, and a law officer who is vested with the authority to make arrests can issue citations. *McDaniel v. State*, 309 Ark. 20, 826 S.W.2d 286 (1992).

Bond.

There is no requirement under this section that officers be bonded in order to lawfully execute their duties. *Dilday v. State*, 300 Ark. 249, 778 S.W.2d 618 (1989).

Competency as Witness.

Law enforcement officers are not disqualified as witnesses based on whether they have met the criteria set forth by regulations promulgated by the Arkansas Commission on Law Enforcement Standards and Training. A person is presumed to be competent to be a witness. *Cherry v. State*, 302 Ark. 462, 791 S.W.2d 354 (1990).

Date of Compliance.

Subsection (a) does not invalidate any action taken by a police officer if the officer was not hired in compliance with the minimum standards set by the commission, as such an interpretation would place police departments in the impossible position of never being able to rectify an erroneous hiring practice from previous years. *Goode v. State*, 303 Ark. 609, 798 S.W.2d 430 (1990).

While deputy had not met commission standards when he was hired in 1982 because the results of the federal fingerprint search were not placed in his file as required by regulation of the commission, that deficiency was corrected by 1984 and from that point on, deputy was in compliance with the commission's standards. *Goode v. State*, 303 Ark. 609, 798 S.W.2d 430 (1990).

Exclusionary Rule.

After the 1989 amendment to subsection (a) of this section, the exclusionary rule no longer applied in cases involving officers who were not qualified. *Harshaw v. State*, 313 Ark. 51, 852 S.W.2d 318 (1993).

Failure to Be Certified.

Chief of police who was not certified during part of tenure could not validly act as law enforcement officer during that period; however, where he was validly employed by the city, his salary was rea-

sonable, and he acted in good faith, the city was not entitled to a refund of the compensation paid him during the period of noncertification. *Allen v. Titsworth*, 279 Ark. 138, 649 S.W.2d 185 (1983).

The exclusionary rule should not be applied in a situation involving both qualified and unqualified officers; thus, where several law enforcement officials participated in defendant's arrest and at least one of them was properly qualified to so participate there was a valid arrest. *Kittler v. State*, 304 Ark. 344, 802 S.W.2d 925 (1991).

Invalid Arrest.

Defendant's conviction was not overturned where arrest was invalid because arresting deputy had not completed the training required by § 12-9-106, because an invalid arrest may call for the suppression of a confession or other evidence, but it does not entitle the defendant to be discharged from responsibility for the offense. *Pipes v. State*, 22 Ark. App. 235, 738 S.W.2d 423 (1987).

Arrests of the defendants were not invalidated merely because the arresting officers' file failed to contain the specified medical forms required by the commission. *Barnes v. State*, 305 Ark. 428, 810 S.W.2d 909 (1991).

Police Misconduct.

Where none of the five arresting officers met the minimum employment standards established by the Arkansas Commission on Law Enforcement Standards and Training the exclusionary rule need not be applied where there is no police misconduct. *State v. Henry*, 304 Ark. 339, 802 S.W.2d 448 (1991).

Proof of Compliance.

Where the trial court denied the defendant's request to examine the arresting officers' personnel files but then held the officers to be properly qualified, there was no prejudice to defendant, and thus no grounds for reversal, since the officer's compliance or noncompliance with the

standards was established through testimony. *Kittler v. State*, 304 Ark. 344, 802 S.W.2d 925 (1991).

Prosecutor's Information.

Where arresting officer's psychological report did not contain recommendations pursuant to Commission on Law Enforcement Standards and Training regulations, his arrest of defendant was invalid. *Freeman v. City of DeWitt*, 301 Ark. 581, 787 S.W.2d 658 (1990).

Since a fingerprint check to disclose any criminal record pursuant to minimum standards for employment or appointment is mandatory rather than directory and the arresting officer's fingerprint check was completed but lost and he was hired "in the dark," his arrest of defendant was invalid. *Johnson v. City of Kensett*, 301 Ark. 592, 787 S.W.2d 651 (1990).

Where the charges asserted against the defendant were by prosecutor's information and not an officer's citation, and even though the officer had made an initial arrest of the defendant on another minor traffic offense, the validity of the charging instrument and the exclusionary rule were not involved. *Moore v. State*, 304 Ark. 257, 801 S.W.2d 638 (1990).

Valid Arrest.

Pursuant to subsection (a), arrest by campus patrolman was not invalid although the patrolman's FBI fingerprint check had not been completed, and he had therefore not satisfied the minimum law enforcement standards when he arrested the defendant. *Smith v. City of Little Rock*, 305 Ark. 168, 806 S.W.2d 371 (1991).

Cited: *Smith v. State*, 278 Ark. 462, 648 S.W.2d 792 (1983); *Lamb v. State*, 21 Ark. App. 111, 730 S.W.2d 252 (1987); *Huls v. State*, 301 Ark. 572, 785 S.W.2d 467 (1990); *Ellis v. State*, 302 Ark. 597, 791 S.W.2d 370 (1990); *King v. State*, 304 Ark. 592, 804 S.W.2d 360 (1991); *Whitaker v. State*, 37 Ark. App. 112, 825 S.W.2d 827 (1992).

12-9-109. Legal counsel.

The Attorney General shall serve as legal counsel to the Arkansas Commission on Law Enforcement Standards and Training, but he or she may designate one (1) or more members of his or her staff to provide legal service to the commission.

History. Acts 1975, No. 452, § 3; A.S.A. 1947, § 42-1002.

12-9-110. Training of civilians to file parking violations and traffic accident reports.

(a) The Arkansas Commission on Law Enforcement Standards and Training shall by regulation establish the qualifications including minimum training standards for persons performing law enforcement-related duties pursuant to this section within cities of the first class and within other areas of the State of Arkansas for cadets that are appointed by the Director of the Department of Arkansas State Police.

(b) Municipal police departments of cities of the first class and the Department of Arkansas State Police may employ persons who do not meet certification requirements prescribed by the commission, and the persons may:

(1) Issue citations for parking violations occurring within their respective jurisdictions; and

(2) Prepare traffic accident reports and issue any related traffic citations.

(c) Persons employed under this section shall not carry firearms or take any other official law enforcement action except as prescribed by this section.

(d)(1) Persons performing law enforcement duties pursuant to this section shall complete all training and meet all minimum standards prescribed by the commission for the exercise of that authority.

(2) However, the department and cities of the first class may establish more stringent training requirements.

History. Acts 1995, No. 910, § 1; 2001, No. 250, § 1; 2003, No. 1111, § 1; 2007, No. 137, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 12-9-101 — 12-9-109 may not apply to this section which was enacted subsequently.

Former § 12-9-110, concerning the Advisory Board on Law Enforcement Standards and Training, was repealed by Acts 1989, No. 25 § 3. The former section was

derived from Acts 1975, No. 452, §§ 3, 4; 1981, No. 45, § 7; A.S.A. 1947, §§ 42-701.1, 42-1002, 42-1003.

Amendments. The 2007 amendment, in (b), substituted “Municipal police departments of cities” for “Cities” and Arkansas Commission on Law Enforcement Standards and Training” for “commission”; and added “and issue any related traffic citations” at the end of (b)(2).

12-9-111. Uniforms.

(a) After seeking prior review by the Legislative Council or Joint Budget Committee and approval by the Chief Fiscal Officer of the State, the Arkansas Commission on Law Enforcement Standards and Training shall be exempt from § 19-6-109(c) for the purpose of buying uniforms for students.

(b) The amount spent for the purchase of uniforms in any one (1) year shall be limited to forty thousand dollars (\$40,000).

History. Acts 1999, No. 1022, § 7.

A.C.R.C. Notes. References to “this subchapter” in §§ 12-9-101 — 12-9-110 may not apply to this section which was enacted subsequently.

Publisher’s Notes. Former § 12-9-

111, concerning the Advisory Board on Law Enforcement Standards and Training, was repealed by Acts 1989, No. 25, § 3. This was derived from Acts 1975, No. 452, § 3; A.S.A. 1947, § 42-1002.

12-9-112. County sheriff as law enforcement officer.

Any former county sheriff of a county who served as county sheriff within that county for at least ten (10) years shall be deemed qualified to be employed as a law enforcement officer for any municipality located within that county, notwithstanding any law or regulation to the contrary.

History. Acts 1999, No. 1472, § 2.

A.C.R.C. Notes. References to “this subchapter” in §§ 12-9-101 — 12-9-111 may not apply to this section which was

enacted subsequently.

Cross References. Selection and training requirements — Exceptions, § 12-9-106.

12-9-113. Domestic violence training.

(a)(1) In accordance with the certification requirements of the Arkansas Commission on Law Enforcement Standards and Training for law enforcement officers, all new law enforcement officers in the State of Arkansas shall complete at least twenty (20) hours of training in domestic violence and twenty (20) hours of training in child abuse.

(2) Practicum training will also be sufficient for this requirement.

(b) Pertaining to domestic abuse, the topics that shall be covered are:

(1) The dynamics of domestic abuse;

(2) The Domestic Abuse Act of 1991, § 9-15-101 et seq.;

(3) Domestic abuse victim interview techniques;

(4) Supportive services available; and

(5) Pro-arrest guidelines and drawbacks of dual arrest and practices to promote the safety of officers.

(c) Pertaining to child abuse victim interview techniques, the topics that shall be covered are:

(1) Current law, including the Child Maltreatment Act, § 12-18-101 et seq., and the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(2) Child sexual abuse; and

(3) Physical and behavioral indicators.

History. Acts 2001, No. 1452, § 1; 2009, No. 758, § 22.

A.C.R.C. Notes. References to “this subchapter” in §§ 12-9-101 — 12-9-112 may not apply to this section which was enacted subsequently.

As enacted, subdivision (a)(1) contained the phrase “effective September 1, 2001” immediately preceding “all new law enforcement officers.”

Acts 2009, No. 758, § 29, provided:

“Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.”

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Amendments. The 2009 amendment substituted “Child Maltreatment Act,

§ 12-18-101 et seq." for "Arkansas Child Maltreatment Act, § 12-12-501 et seq." in (c)(1).

12-9-114. Training concerning sexual assaults.

(a)(1) The Arkansas Commission on Law Enforcement Standards and Training shall require all law enforcement officers to complete a minimum of twenty (20) hours of training concerning sexual assaults as a part of the basic police training course curriculum.

(2) Practicum training will be sufficient for this requirement.

(b) At a minimum, the training shall cover the following topics:

- (1) The dynamics of sexual assault;
- (2) The laws concerning sexual assault;
- (3) Sexual assault victim interview techniques; and
- (4) Support services available to sexual assault victims.

History. Acts 2003, No. 509, § 1.

enacted subsequently.

A.C.R.C. Notes. References to "this subchapter" in §§ 12-9-101 — 12-9-113 may not apply to this section, which was

Cross References. Sexual offenses, § 5-14-101 et seq.

12-9-115. Training for constables.

After consultation with the Arkansas Constables Association, the Arkansas Commission on Law Enforcement Standards and Training shall develop a training course of one hundred twenty (120) hours to one hundred sixty (160) hours for certifying new constables.

History. Acts 2007, No. 841, § 3.

A.C.R.C. Notes. References to "this subchapter" in §§ 12-9-101 — 12-9-113 may not apply to this section, which was enacted subsequently.

Cross References. Access to criminal history records, § 12-12-211.

Constable training requirements and uniform requirements, § 14-14-1314.

SUBCHAPTER 2 — LAW ENFORCEMENT TRAINING ACADEMY

SECTION.

- 12-9-201. Establishment.
- 12-9-202. Location of academy.
- 12-9-203. Acceptance of gifts, grants, etc. — Disposition.
- 12-9-204. Academy instructors — Law enforcement powers.
- 12-9-205. Approval of applications.
- 12-9-206. Expenses furnished by academy — Exceptions.

SECTION.

- 12-9-207. Unopposed candidates for county sheriff.
- 12-9-208. State Capitol Police — Training course.
- 12-9-209. Counties, cities, etc. — Reimbursement for training costs.

Cross References. Police training school, § 12-8-119.

Effective Dates. Acts 1969, No. 608, § 10: Apr. 21, 1969. Emergency clause

provided: "It is hereby found and determined that the Sixty-Seventh General Assembly has, by a vote of two-thirds of the members elected to both Houses, voted to

extend the regular session of the Sixty-Seventh General Assembly, as authorized in the Constitution; that under the provisions of Const., Amend. 7, enactments of the General Assembly that do not have an emergency clause do not become effective until ninety (90) days after the date of final adjournment of the General Assembly; that the extended session of the General Assembly may not adjourn in time for this act to take effect prior to July 1, 1969, thereby depriving the agency for which funds are appropriated herein of necessary operating funds to commence the next fiscal biennium; and in order that the appropriation made herein may be available on July 1, 1969, the General Assembly hereby determines that the immediate passage of this act is necessary for the maintenance and operation of the essential governmental services. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval, provided that the appropriation authorized herein shall not be available until July 1, 1969.”

Acts 1979, No. 147, § 3: Feb. 19, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that the extent of the law enforcement authority of teaching and instruction personnel at the Arkansas Law Enforcement Training Academy is not clear under the present law; that it is essential that such personnel have broad law enforcement authority with respect to the control and protection of academy property and personnel both on and off the premises of the academy, and broad authority to cooperate with, assist and support local law enforcement officers in performing law enforcement functions; and that this act is designed to specifically give such personnel law enforcement authority and should be given effect at the earliest possible date to enable such personnel to more effectively and efficiently carry out their responsibilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 2003, No. 1051, § 2: Apr. 3, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that full-time law enforcement instructors at Black River Technical College Law Enforcement Training Academy need access to restricted law enforcement training classes and material to ensure current skills are maintained while instructing law enforcement personnel in basic police training and other law enforcement training courses; that a delay in the implementation of this act will hamper the state’s ability to provide training and certification of an adequate number of law enforcement officers; and that this act is immediately necessary because the state needs to ensure that law enforcement personnel are trained and certified in sufficient time to provide for the public safety of the citizens of the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 1330, § 2: Mar. 29, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that full-time law enforcement instructors at the Arkansas Police Corps Training Program at the University of Arkansas at Little Rock need access to restricted law enforcement training classes and material to ensure that current skills are maintained while instructing law enforcement personnel in basic police training and other law enforcement training courses; and that a delay in the implementation of this act will hamper the state’s ability to provide training and certification of an adequate number of law enforcement officers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during

which the Governor may veto the bill; or and the veto is overridden, the date the
(3) If the bill is vetoed by the Governor last house overrides the veto."

12-9-201. Establishment.

There is established the Arkansas Law Enforcement Training Academy for the training and instruction of state, county, municipal, and other law enforcement officers.

History. Acts 1963, No. 526, § 1; 1965, No. 172, § 1; A.S.A. 1947, § 42-701.

Publisher's Notes. Acts 1981, No. 45, § 7, provided, in part, that the Arkansas Law Enforcement Training Academy, which was transferred by a type 4 transfer to the Department of Public Safety pursuant to Acts 1971, No. 38, § 14 [repealed], would be detached from that department and transferred to the Arkansas Commission on Law Enforcement Standards and Training, which commission would succeed to all powers, functions, and duties of the Arkansas Law Enforcement Training Academy and the Arkansas Law Enforcement

Training Academy Board. It further provided that all the property, equipment, personnel, and funds of the Law Enforcement Training Academy Division of the Department of Public Safety (abolished by Acts 1981, No. 45, § 1) would be transferred to, and thereafter administered by, the Arkansas Commission on Law Enforcement Standards and Training and that the act should not be construed so as to reduce any right which an employee of the Law Enforcement Training Academy would have under any civil service or merit system.

12-9-202. Location of academy.

The Arkansas Law Enforcement Training Academy shall be located at a place which, in the opinion of the Arkansas Commission on Law Enforcement Standards and Training, will serve the best interests of the state in the carrying out of the intent and purposes of this subchapter.

History. Acts 1963, No. 526, § 3; 1965, No. 172, § 2; A.S.A. 1947, § 42-703.

12-9-203. Acceptance of gifts, grants, etc. — Disposition.

(a) The Arkansas Law Enforcement Training Academy is granted authority to accept gifts, grants, donations, equipment and materials, and bequests of money or gratuities donated by private persons or corporations.

(b) All such money so received shall be deposited into the State Treasury to the credit of the Miscellaneous Agencies Fund Account of the State General Government Fund.

History. Acts 1969, No. 608, § 7.

12-9-204. Academy instructors — Law enforcement powers.

(a) All full-time basic police training course teaching and instruction personnel at the Arkansas Law Enforcement Training Academy, the Arkansas Police Corps Training Program at the University of Arkansas at Little Rock, and the Black River Technical College Law Enforcement Training Academy are classified and designated as law enforcement officers after meeting minimum qualifications for law enforcement officers certification as established by the Arkansas Commission on Law Enforcement Standards and Training.

(b)(1) The personnel shall have and exercise all authority and functions of other law enforcement officers in the State of Arkansas.

(2) The personnel shall have general law enforcement authority to cooperate with, assist, and support local law enforcement officers in all law enforcement activities and functions.

(c) The personnel shall:

(1) Be credited with service toward maintaining and increasing certification levels for time employed at the Arkansas Law Enforcement Training Academy and the Black River Technical College Law Enforcement Training Academy; and

(2) Receive credit for years of law enforcement service for time employed at the Arkansas Law Enforcement Training Academy, the Arkansas Police Corps Training Program at the University of Arkansas at Little Rock, or the Black River Technical College Law Enforcement Training Academy upon employment as law enforcement officers elsewhere in the State of Arkansas.

(d) An Arkansas Law Enforcement Training Academy, Arkansas Police Corps Training Program at the University of Arkansas at Little Rock, or Black River Technical College Law Enforcement Training Academy instructor classified and designated as a law enforcement officer under this section:

(1) Is not qualified to enroll in a different retirement system because of the classification or designation; and

(2) Shall not qualify for any benefit enhancement other than that available under his or her current retirement system.

History. Acts 1979, No. 147, § 1; A.S.A. inserted “the Arkansas Police Corps 1947, § 42-708; Acts 1995, No. 365, § 1; Training Program at the University of 2003, No. 1051, § 1; 2005, No. 1330, § 1. Arkansas at Little Rock” in (a), (c)(2) and

Amendments. The 2005 amendment (d).

12-9-205. Approval of applications.

Applications for attendance at the Arkansas Law Enforcement Training Academy shall be screened and approved as follows:

(1) Applicants of the Department of Arkansas State Police shall be approved by the Arkansas State Police Commission;

(2) Applications from sheriffs or deputy county sheriffs and constables shall be approved by the Executive Committee of the Arkansas Sheriffs Association; and

(3) Applications from any officer of a municipal police department shall be approved by the Executive Committee of the Arkansas Peace Officers' Association.

History. Acts 1963, No. 526, § 2; A.S.A. 1947, § 42-702.

12-9-206. Expenses furnished by academy — Exceptions.

(a) The Arkansas Law Enforcement Training Academy shall furnish, without cost to applicants, the necessary food, lodging, laundry, and other necessary expenses while attending the academy.

(b)(1) However, the salary of applicants and the necessary transportation cost in traveling to and from the academy shall be paid by the municipality or county in which employed.

(2) The travel expenses of a constable in attending the academy shall be paid by the county.

History. Acts 1963, No. 526, § 5; A.S.A. 1947, § 42-705.

12-9-207. Unopposed candidates for county sheriff.

(a) Any unopposed candidate for the position of county sheriff shall be permitted to attend the Arkansas Law Enforcement Training Academy for purposes of training and instruction.

(b) The county in which the applicant shall be employed shall pay any necessary transportation cost in traveling to and from the academy.

History. Acts 1975, No. 183, §§ 1, 2; A.S.A. 1947, §§ 42-706, 42-707.

12-9-208. State Capitol Police — Training course.

All members of the State Capitol Police shall satisfactorily complete the training course for law enforcement officers at the Arkansas Law Enforcement Training Academy within twelve (12) months of their hire date.

History. Acts 1987, No. 468, § 1.

Cross References. Secretary of State, powers and duties generally, § 25-16-403.

12-9-209. Counties, cities, etc. — Reimbursement for training costs.

(a)(1) If any county, city, or town pays the cost or expenses for training a law enforcement officer at the Arkansas Law Enforcement Training Academy and another county, city, or town, or an agency of the State of Arkansas employs that officer within eighteen (18) months after completion of the training in a position requiring a certificate of training from the Arkansas Law Enforcement Training Academy, the

state agency, county, city, or town so employing the officer, at the time of employing the officer, shall reimburse the county, city, or town for all or a portion of the expenses incurred by the county, city, or town for the training of the law enforcement officer at the academy, unless the law enforcement officer has been terminated by the county, city, or town which paid the costs or expenses of training, in which case no reimbursement is required from any county, city, or town hiring the officer.

(2) Reimbursement may only be sought from the first county, city, or town which employs the officer after the county, city, or town which paid the costs or expenses of training.

(3) Reimbursement shall include any salary, travel expenses, food, lodging, or other costs required to be paid by the county, city, or town, as follows:

(A) If the person is employed within two (2) months after completion of the training, the employing agency shall reimburse the total cost of the training;

(B) If the person is employed more than two (2) months but not more than six (6) months after completion of the training, the employing agency shall reimburse eighty percent (80%) of the cost of the training;

(C) If the person is employed more than six (6) months but not more than ten (10) months after completion of the training, the employing agency shall reimburse sixty percent (60%) of the cost of the training;

(D) If the person is employed more than ten (10) months but not more than fourteen (14) months after completion of the training, the employing agency shall reimburse forty percent (40%) of the cost of the training; or

(E) If the person is employed more than fourteen (14) months but not more than eighteen (18) months after completion of the training, the employing agency shall reimburse twenty percent (20%) of the cost of the training.

(b)(1) If any county, city, town, or state agency which employs an officer whose training expense was paid by another county, city, or town fails to make reimbursement for the expenses as required in subsection (a) of this section, the county, city, or town entitled to reimbursement shall notify the Treasurer of State.

(2) The Treasurer of State shall then withhold the amount of the reimbursement due for training the officer from the county or municipal aid of the employing county, city, or town or from funds appropriated to the employing state agency and shall remit the amount to the county, city, or town which is entitled to the reimbursement under the provisions of this section.

History. Acts 1987, No. 880, §§ 1, 2;
1993, No. 191, § 1.

SUBCHAPTER 3 — AUXILIARY LAW ENFORCEMENT OFFICERS

SECTION.

12-9-301. Definitions.

12-9-302. Arkansas Commission on Law Enforcement Standards and Training — Powers and duties.

12-9-303. Authority of officers.

12-9-304. Appointment and training requirements.

SECTION.

12-9-305. Failure to meet standards — Actions by private citizens.

12-9-306. Number restricted.

12-9-307. Benefits.

12-9-308. Liability of law enforcement agency and political subdivision.

Effective Dates. Acts 1983, No. 757, § 11: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the use and authority of persons appointed by the law enforcement agency director, chief, or sheriff and who are known by such terms as voluntary, auxiliary, reserves, voluntary officers, mounted patrol, etc., are important to the health, safety, and welfare of the people of this state. There is no statutory authority to regulate the appointment and training, the supervision or the authority of the auxiliary law enforcement officer. Therefore, an emergency is declared to exist and this act being necessary for the protection of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 275, § 3: Mar. 17, 1987. Emergency clause provided: "Whereas, Section 8 of Act 757 of 1983 as presently written is in conflict with other state laws which provide tort immunity for Arkansas local governments and their employees, volunteer firemen and auxiliary police and this act will conform to other existing laws and should be given effect immediately. Therefore, an emergency is hereby

declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), No. 12, § 6: Aug. 22, 1994. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law auxiliary law enforcement officers may not receive compensation for their services; that this restriction is unreasonable and makes it impossible for political subdivisions to engage the services of such officers; that in some rural areas, there is a severe shortage of law enforcement officers and some political subdivisions in such areas are desirous of engaging the services of auxiliary law enforcement officers to perform certain specific functions; that this act is designed to remove the restriction on compensation of auxiliary law enforcement officers to enable local political subdivisions to engage the services of such officers and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

12-9-301. Definitions.

As used in this subchapter:

(1) "Auxiliary law enforcement officer" means a person who meets the minimum standards and training requirements prescribed for such officers by law and regulations, and who is appointed by a political subdivision or a law enforcement agency as a reserve officer, volunteer officer, or mounted patrol, but does not include any officer or deputy

county sheriff employed by a planned community property owners' association;

(2) "Commission" means the Arkansas Commission on Law Enforcement Standards and Training as established by § 12-9-103;

(3) "Direct supervision" means having a designated on-duty, full-time certified law enforcement officer responsible for the direction, conduct, and performance of the auxiliary law enforcement officer when that auxiliary law enforcement officer is working an assigned duty, but does not mean that the full-time certified law enforcement officer must be in the physical presence of the auxiliary law enforcement officer when the auxiliary law enforcement officer is working an assigned duty;

(4) "Honorary police officer" means any person having no law enforcement authority except as a private citizen;

(5) "Law enforcement agency" means any police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal, traffic, or highway laws of this state;

(6) "Law enforcement officer" means any appointed law enforcement officer or county sheriff who is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state;

(7) "Part-time law enforcement officer" means, as applied to employment and training requirements, any officer working less than twenty (20) hours per week and receiving a salary from the employing law enforcement agency; and

(8) "Political subdivision" means any county, municipality, township, or other specific local unit of general government.

History. Acts 1983, No. 757, § 1; A.S.A. 1947, § 42-1401; Acts 1994 (2nd Ex. Sess.), No. 12, § 1.

CASE NOTES

Direct Supervision.

The physical presence of a supervising officer is not required at the scene of an arrest made by an auxiliary officer. *McAfee v. State*, 290 Ark. 446, 720 S.W.2d 307 (1986); *Turnbull v. State*, 22 Ark. App. 18, 731 S.W.2d 794 (1987).

Direct supervision of an auxiliary law enforcement officer can be provided by radio contact. *Turnbull v. State*, 22 Ark. App. 18, 731 S.W.2d 794 (1987).

Auxiliary officer was acting under the

direct supervision of his supervisor even though the superior was not on duty, where both the officer and his superior were aware of each other's whereabouts at the time of an arrest, and the officer, pursuant to his superior's instructions, phoned the superior from the police station and received further instructions from the superior as to how he should proceed in handling the situation. *Martindill v. State*, 40 Ark. App. 16, 839 S.W.2d 545 (1992).

12-9-302. Arkansas Commission on Law Enforcement Standards and Training — Powers and duties.

In addition to the powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training in §§ 12-9-104 — 12-9-107, the commission shall have power to:

- (1) Promulgate rules and regulations for the administration of this subchapter;
- (2) Require the submission of reports and information by law enforcement agencies within this state;
- (3)(A) Establish minimum selection and training standards for admission to appointment as an auxiliary law enforcement officer. The standards may take into account different requirements for urban and rural areas.
(B) However, the minimum selection and training standards for admission to appointment may not exceed those required for part-time law enforcement officers;
- (4) Establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs of schools operated by and for the training of auxiliary law enforcement officers;
- (5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, community colleges, and other institutions or organizations concerning the development of police training schools and programs or courses of instruction;
- (6) Approve institutions and facilities to be used by or for the state or any political subdivision thereof for the specific purpose of training law enforcement officers and recruits;
- (7) Exclude auxiliary law enforcement officers from training classes sponsored and supported by the Arkansas Law Enforcement Training Academy;
- (8) Adopt rules and minimum standards for such schools which shall include, but not be limited to, establishing minimum:
 - (A) Basic training requirements which an auxiliary law enforcement officer must satisfactorily complete before being eligible for appointment;
 - (B) Course attendance and equipment requirements; and
 - (C) Requirements for instructors;
- (9) Conduct review of agency records to assist any department head in complying with the provisions of this subchapter;
- (10) Adopt and amend bylaws, consistent with law, for its internal management and control; and
- (11) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter.

History. Acts 1983, No. 757, § 2; A.S.A. 1947, § 42-1402.

12-9-303. Authority of officers.

(a) An auxiliary law enforcement officer shall have the authority of a police officer as set forth by statutes of this state when the auxiliary law enforcement officer is performing an assigned duty and is under the direct supervision of a full-time certified law enforcement officer.

(b) When not performing an assigned duty and when not working under the direct supervision of a full-time certified law enforcement officer, an auxiliary law enforcement officer shall have no authority other than that of a private citizen.

(c) An auxiliary law enforcement officer, when not working under the direct supervision of a full-time certified law enforcement officer, may perform tasks such as traffic direction, parade functions, etc., that are clearly not law enforcement functions and are assigned by the law enforcement agency.

(d) Nothing in this subchapter shall be construed as defining an auxiliary law enforcement officer as a full-time certified law enforcement officer, a part-time certified law enforcement officer, or a specialized certified officer as defined by §§ 12-9-101, 12-9-102, 12-9-104 — 12-9-109 and the commission.

History. Acts 1983, No. 757, § 5; A.S.A. 1947, § 42-1405.

CASE NOTES

ANALYSIS

Auxiliary Officer.

Direct Supervision.

On Duty.

Unsupervised Deputies.

Auxiliary Officer.

The physical presence of a supervising officer is not required at the scene of an arrest made by an auxiliary officer. *McAfee v. State*, 290 Ark. 446, 720 S.W.2d 307 (1986); *Turnbull v. State*, 22 Ark. App. 18, 731 S.W.2d 794 (1987).

The presence of a second officer, who was a full-time, certified officer, did not make the arrest by the auxiliary law enforcement officer lawful. *McAfee v. State*, 290 Ark. 446, 720 S.W.2d 307 (1986).

To require that the designated supervising officer be speaking to the auxiliary officer during the arrest process would constitute an unreasonable interpretation of subsection (a) of this section. *McAfee v. State*, 290 Ark. 446, 720 S.W.2d 307 (1986).

Direct Supervision.

Auxiliary officer was acting under the direct supervision of his supervisor even though the superior was not on duty, where both the officer and his superior were aware of each other's whereabouts at the time of the arrest, and the officer phoned the superior from the police station and received further instructions from the superior as to how he should proceed in handling the situation. *Martindill v. State*, 40 Ark. App. 16, 839 S.W.2d 545 (1992).

On Duty.

Neither subsection (a) nor (b) contains language that requires that the auxiliary officer be "on duty" before he or she could be authorized and activated to perform law enforcement functions. *Martin v. State*, 327 Ark. 38, 936 S.W.2d 75 (1997).

Unsupervised Deputies.

Where defendant was arrested and issued citation for a misdemeanor by two unsupervised auxiliary deputies, defendant could not be tried or convicted of the

offense because unsupervised auxiliary deputies lacked authority to lawfully charge defendant with a misdemeanor offense. *Brewer v. State*, 286 Ark. 1, 688 S.W.2d 736 (1985).

Cited: *King v. State*, 304 Ark. 592, 804 S.W.2d 360 (1991); *Jones v. Parrish*, 330 Ark. 521, 954 S.W.2d 934 (1997).

12-9-304. Appointment and training requirements.

(a)(1) No person shall be appointed as an auxiliary law enforcement officer until the minimum standards for appointment and training requirements have been completed.

(2) Any auxiliary law enforcement officer who has not met these requirements shall have no law enforcement authority except that which is authorized for a private citizen.

(b) All persons who are serving as auxiliary law enforcement officers prior to March 24, 1983, are exempt from meeting the appointment requirements.

(c) The training requirements for auxiliary law enforcement officers shall be established by the Arkansas Commission on Law Enforcement Standards and Training, and the basic training course shall not exceed the part-time law enforcement officers' training requirements.

(d) Honorary police officers are exempt from the provisions of this subchapter.

(e) The commission may issue a certificate evidencing satisfactory completion of the requirements of this subchapter when evidence is submitted by the law enforcement agency director, chief, or county sheriff that the auxiliary law enforcement officer has met the training and selection requirements.

(f) It shall be the responsibility of the appointing law enforcement agency to provide or have provided not less than one hundred (100) hours of commission-approved law enforcement training, which will include a firearms qualification course equivalent to the firearms qualification requirements for a full-time law enforcement officer, and no auxiliary law enforcement officer shall bear arms until having successfully completed the training.

(g) Nothing in this section shall be construed to preclude any law enforcement agency from establishing qualifications and standards for appointing and training of auxiliary law enforcement officers that exceed those set by this subchapter or by the commission.

(h) Any auxiliary law enforcement officer failing to meet the training requirements as set forth in this subchapter shall lose his or her appointment as auxiliary law enforcement officer and shall not be reappointed until training requirements have been met.

(i) No person may be appointed or serve as an auxiliary law enforcement officer if the person has been convicted by a state or by the federal government of a crime, the punishment for which could have been imprisonment in a federal penitentiary or a state prison.

(j) Every person appointed or serving as an auxiliary law enforcement officer shall be a citizen of the United States and shall be at least twenty-one (21) years of age.

History. Acts 1983, No. 757, § 4; A.S.A. 1947, § 42-1404.

12-9-305. Failure to meet standards — Actions by private citizens.

(a) An auxiliary law enforcement officer who does not meet the standards and qualifications set forth in this subchapter or any made by the Arkansas Commission on Law Enforcement Standards and Training shall not take any official action as a law enforcement officer and any action taken shall be held as invalid.

(b)(1) Nothing in this subchapter or any requirement made by the commission shall prevent any action by a private citizen that is now authorized by law.

(2) No provision of this subchapter shall affect the deputizing of a private citizen by a law enforcement officer in a time of a disaster or emergency.

History. Acts 1983, No. 757, § 3; A.S.A. 1947, § 42-1403.

CASE NOTES

Unsupervised Deputies.

Where defendant was arrested and issued a citation for a misdemeanor by two unsupervised auxiliary deputies, defendant could not be tried or convicted of the offense because unsupervised auxiliary

deputies lacked authority to lawfully charge defendant with a misdemeanor offense. *Brewer v. State*, 286 Ark. 1, 688 S.W.2d 736 (1985).

Cited: *Pipes v. State*, 22 Ark. App. 235, 738 S.W.2d 423 (1987).

12-9-306. Number restricted.

(a)(1) Recognizing the need for limiting the number of auxiliary law enforcement officers in this state, a political subdivision is given the authority to appoint auxiliary law enforcement officers and the political subdivision shall have no more auxiliary law enforcement officers than the larger number of:

(A) One (1) auxiliary law enforcement officer for each full-time certified law enforcement officer employed by the appointing law enforcement agency; or

(B) One (1) auxiliary law enforcement officer for each one thousand (1,000) persons in the political subdivision as determined by the latest official census.

(2)(A) However, if due to special or unusual problems or circumstances, any political subdivision has a need for a greater number of auxiliary law enforcement officers than is authorized in subdivisions (a)(1)(A) or (B) of this section, it may make a request to the Arkansas Commission on Law Enforcement Standards and Training for the additional auxiliary law enforcement officers.

(B) Each request shall state the special or unusual problems involved which justify the request, the number of additional auxiliary

law enforcement officers requested, and such other information as the commission may require.

(C) If the commission finds that the public interest will best be served by allowing the political subdivision to appoint the additional auxiliary law enforcement officers requested, it may grant the request.

(b) Honorary police officers without law enforcement authority are not restricted in number by this section.

History. Acts 1983, No. 757, § 6; A.S.A. 1947, § 42-1406.

12-9-307. Benefits.

(a) The auxiliary law enforcement officer or the governing political subdivision may elect to join the workers' compensation system for the benefit of the auxiliary law enforcement officer, and the auxiliary law enforcement officer may receive benefits therefrom as provided by statutes.

(b) Auxiliary law enforcement officers shall have no claim to the benefits of any police retirement and pension funds in this state. Any claim presented by an auxiliary law enforcement officer for benefits from any police retirement and pension fund shall be held null and void.

(c) The political subdivision may elect to provide liability insurance, uniforms, and such other equipment as may be necessary to perform the assigned tasks, and these provisions shall not be considered as salary or wages.

(d) An auxiliary law enforcement officer may receive such compensation, per diem, expenses, or other allowances for his or her services, for such purposes as transporting juveniles, as may be agreed to by the appointing authority.

History. Acts 1983, No. 757, § 7; A.S.A. 1947, § 42-1407; Acts 1994 (2nd Ex. Sess.), No. 12, § 2.

12-9-308. Liability of law enforcement agency and political subdivision.

The law enforcement agency director, chief, or county sheriff and the political subdivision appointing the auxiliary law enforcement officer shall not be held either civilly or criminally liable or in any other manner for the actions of an auxiliary law enforcement officer.

History. Acts 1983, No. 757, § 8; A.S.A. 1947, § 42-1408; Acts 1987, No. 275, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey —
Torts, 10 U. Ark. Little Rock L.J. 609.

SUBCHAPTER 4 — RADAR INSTRUCTORS AND OPERATORS

SECTION.

12-9-401. Definitions.

12-9-402. Powers and duties of the commission.

SECTION.

12-9-403. Appointment and training.

12-9-404. Failure to meet standards.

Effective Dates. Acts 1983, No. 672, § 7: Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that no required minimum standards for training and certification of police traffic radar instructors or operators exists, and that properly trained and certified police officers are important to the health, safety, and welfare of the people of this state. There is no statutory authority to regulate the use of police traffic radar for law enforcement purposes. Therefore, an emergency is declared to exist and this act being necessary for the protection of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 115, § 3: Feb. 15, 1985. Emergency clause provided: "It is hereby

found and determined by the General Assembly that Act 672 of 1983 empowered the Governor's Commission on Law Enforcement Standards and Training to establish minimum standards for radar instructors and operators; that the act's definition of police traffic radar has resulted in adverse rulings against the state by our courts; that this act redefines the term in a manner that will better enable the commission to implement the act; and that this act is immediately necessary to cure the defective definition. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

12-9-401. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Commission on Law Enforcement Standards and Training as established by § 12-9-103;

(2) "Full-time law enforcement officer" means any county sheriff or officer employed by a law enforcement agency who works forty (40) or more hours per week or any part-time law enforcement officer employed by a law enforcement agency who has met the selection and training requirements for full-time certified officers;

(3) "Law enforcement agency" means any police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal, traffic, or highway laws of this state;

(4) "Law enforcement officer" means any appointed law enforcement officer or county sheriff who is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state;

(5) "Part-time law enforcement officer" means any officer working less than twenty (20) hours per week and receiving a salary from the employing law enforcement agency;

(6) "Police traffic radar" means any speed measurement device utilizing the Doppler principle or an infrared light system to measure the speed of motor vehicles; and

(7) "Political subdivision" means any county, municipality, township, or other specific local unit of general government.

History. Acts 1983, No. 672, § 1; 1985, 1991, No. 374, § 1; 1993, No. 63, § 1; No. 115, § 1; A.S.A. 1947, § 42-1010; Acts 1997, No. 1105, § 1.

12-9-402. Powers and duties of the commission.

In addition to the powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training in §§ 12-9-104 — 12-9-107, the commission shall have power to:

(1) Promulgate rules and regulations for the administration of this subchapter;

(2) Require the submission of reports and information by law enforcement agencies within this state;

(3) Establish minimum selection and training standards for appointment as a police traffic radar operator and police traffic radar instructor. The standards may take into account different requirements for urban and rural areas;

(4) Establish minimum curriculum requirements for the basic radar operator's course, the basic radar instructor's course, and the refresher courses for the radar operators and the radar instructors;

(5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, community colleges, and other institutions or organizations concerning the development of police traffic radar training schools and programs or courses of instruction;

(6) Approve institutions and facilities to be used by or for the state or any political subdivision thereof for the specific purpose of training radar operators and radar instructors;

(7) Exclude auxiliary law enforcement officers, part-time law enforcement officers, and honorary law enforcement officers from training classes sponsored and supported by the Arkansas Law Enforcement Training Academy for the training of radar operators and radar instructors;

(8) Adopt rules and minimum standards for such schools and courses which shall include, but not be limited to, establishing minimum:

(A) Basic and refresher training requirements which police radar operators and police radar instructors must satisfactorily complete before being eligible for radar certification;

(B) Course attendance and equipment requirements; and

(C) Requirements for instructors;

(9) Conduct review of agency records to assist any department head in complying with the provisions of this subchapter;

(10) Adopt and amend bylaws, consistent with law, for its internal management and control; and

(11) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter.

History. Acts 1983, No. 672, § 2; A.S.A. 1947, § 42-1011.

12-9-403. Appointment and training.

(a) No person shall be appointed as a police traffic radar operator or police traffic radar instructor until the minimum standards for training requirements have been completed.

(b) The training requirements for police traffic radar operators or police traffic radar instructors shall be established by the Arkansas Commission on Law Enforcement Standards and Training.

(c) The commission may issue a certificate evidencing satisfactory completion of the requirements of this subchapter when evidence is submitted by the law enforcement agency director, chief, or county sheriff that the police traffic radar operator has met the training requirements.

(d) Nothing in this section shall be construed to preclude any law enforcement agency from establishing qualifications and standards for appointing and training of police traffic radar operators and police traffic radar instructors that exceed those set by this subchapter or by the commission.

(e) Any police traffic radar operator or police traffic radar instructor failing to meet the training requirements as set forth in this subchapter shall lose his or her authority to operate a police traffic radar for enforcement purposes.

(f) A law enforcement officer shall complete the commission-required training for officer certification before being eligible for certification as a police traffic radar operator.

(g) Only a full-time law enforcement officer, part-time I law enforcement officer, and part-time II law enforcement officer, as defined by commission regulation, will be eligible for certification as a police traffic radar operator.

History. Acts 1983, No. 672, § 4; A.S.A. 1947, § 42-1013; Acts 1997, No. 734, § 1; 2005, No. 1962, § 28.

Amendments. The 2005 amendment deleted former (b) and redesignated the remaining subsections accordingly; sub-

stituted “Arkansas Commission on Law Enforcement Standards and Training” for “commission” in present (b); and substituted “shall complete” for “must have completed” in present (f).

CASE NOTES

Cited: Price v. State, 285 Ark. 148, 685 S.W.2d 506 (1985).

12-9-404. Failure to meet standards.

A police traffic radar operator who does not meet the standards and qualifications set forth in this subchapter or any made by the Arkansas Commission on Law Enforcement Standards and Training shall not take any official action as a police traffic radar operator and any action taken shall be held as invalid.

History. Acts 1983, No. 672, § 3; A.S.A. 1947, § 42-1012.

SUBCHAPTER 5 — MANAGEMENT TRAINING AND EDUCATION

SECTION.

- 12-9-501. Legislative determination.
- 12-9-502. Administration and approval.
- 12-9-503. Criminal Justice Institute Advisory Board.
- 12-9-504. Evaluation.
- 12-9-505. Certification and accreditation program.

SECTION.

- 12-9-506. Compensation.
- 12-9-507. Staffing procedure.
- 12-9-508. National Center for Rural Law Enforcement Advisory Board.

A.C.R.C. Notes. References to “this subchapter” in §§ 12-9-501 — 12-9-508 may not apply to § 12-9-507 which was enacted subsequently.

Publisher’s Notes. Acts 1993, No. 1111, § 7, provided: “Nothing in this act shall be construed to develop or provide basic skills mandated training presently carried out by Arkansas Law Enforcement Training Academy.”

Cross References. University of Arkansas at Little Rock, § 6-64-301.

Effective Dates. Acts 1993, No. 1111, § 11: July 1, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that heads of law enforcement organizations are finding it increasingly difficult to maintain their expertise in new and innovative management techniques and technologies related to law enforcement management and administrative and operational areas. It is imperative that the leaders and management staff of law enforcement receive continuing education to enhance and improve their level of expertise and maintain professionalism. Funds for this type of education are not available from other sources. Therefore in order to meet this need, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public

peace, health and safety shall be in full force and effect from July 1, 1993.”

Acts 1994 (2nd Ex. Sess.), No. 35, § 12: Aug. 25, 1994. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly meeting in Second Extraordinary Session, that the passage of this Act is of critical importance in the provision of needed resources to overcome severe public information and service deficiencies in such areas as criminal justice instruction, crime intervention services, and research activities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 1035, § 8: July 1, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1997, is essential to the efficient transfer of the Criminal Justice Institute to the University of Arkansas as a division thereof, and that in the event of the extension of the Regular Session, any delay in the effective date of this act beyond July 1, 1997, could work irreparable harm upon the proper administration of the Criminal Justice Institute

and provision of its services to Arkansas law enforcement and national law enforcement. Therefore, an emergency is declared to exist and this act being neces-

sary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

12-9-501. Legislative determination.

(a) The Criminal Justice Institute, an educational entity, was created for the purpose of providing management education and training, technical assistance, practical research and evaluation, a clearinghouse, and computer and forensic education and training for Arkansas law enforcement and national law enforcement.

(b) The initiatives developed by the Criminal Justice Institute are applicable on a national level, and this application for conceptualization and practice will be through the National Center for Rural Law Enforcement.

(c)(1) The General Assembly recognizes the importance of providing management, education, and training to law enforcement and, through the initiatives developed by the Criminal Justice Institute, the citizens of the State of Arkansas will be better served.

(2) These initiatives further the enhancement of the workforce through the developmental process of continuing education by which skills are upgraded and capabilities increased.

(3) This process will assist law enforcement ability to adapt to an ever-changing environment.

History. Acts 1993, No. 1111, § 1; 1997, No. 1035, § 1.

12-9-502. Administration and approval.

(a)(1) The Criminal Justice Institute of the University of Arkansas at Little Rock has served as the coordinator and manager of all supervision, management, and executive education and training for law enforcement officers in the State of Arkansas.

(2) Effective July 1, 1997, to accomplish its broader scope and mission, the institute and its functions, budget, personnel, equipment, all funds, and existing contracts and agreements, including those made at the behest of the institute, shall be transferred in their entirety from the University of Arkansas at Little Rock to the University of Arkansas to better serve the citizens of the State of Arkansas.

(b)(1)(A) In its association with the University of Arkansas as a division thereof, the Director of the Criminal Justice Institute shall be appointed by and report to the President of the University of Arkansas.

(B) The president shall seek the advice and counsel of the Criminal Justice Institute Advisory Board for Law Enforcement Management Training and Education in the appointment of the director.

(2) In the administration of the institute, efforts shall be made to maintain personnel salary levels at a competitive level to permit recruitment of the best qualified candidates.

History. Acts 1993, No. 1111, § 3; 1997, No. 1035, § 2.

12-9-503. Criminal Justice Institute Advisory Board.

(a) There is established the Criminal Justice Institute Advisory Board for Law Enforcement Management Training and Education.

(b)(1) The board shall have sixteen (16) members.

(2)(A)(i) The board shall consist of the following representatives:

(a) Two (2) representatives from the Arkansas Municipal Police Association;

(b) Two (2) representatives from the Arkansas Association of Chiefs of Police;

(c) Two (2) representatives from the Arkansas Sheriffs Association; and

(d) Two (2) faculty members or administrators from institutions of higher education.

(ii) The eight (8) members of the board in subdivision (b)(2)(A)(i) of this section shall be appointed by the Governor.

(iii) Terms of the eight (8) members appointed pursuant to subdivision (b)(2)(A)(ii) of this section shall be four (4) years in length.

(B) Other members of the board shall be:

(i) The Special Agent in Charge of the Arkansas office of the Federal Bureau of Investigation or his or her designee;

(ii) The Executive Director of the Arkansas Sheriffs Association;

(iii) The Executive Director of the Arkansas Association of Chiefs of Police;

(iv) The Executive Director of the Arkansas Municipal Police Association;

(v) The Director of the Criminal Justice Institute;

(vi) The Director of Legislative and Governmental Affairs of the Arkansas State Police Association;

(vii) A citizen at large nominated by the Director of the Criminal Justice Institute; and

(viii) The President of the University of Arkansas or his or her designee.

(C)(i) Terms of the members serving pursuant to subdivision (b)(2)(B) of this section shall be five (5) years in length, and the terms shall be staggered so that, insofar as is possible, an equal number of members shall rotate each year.

(ii) However, the term of a member who serves by virtue of the office he or she holds shall run so long as the member holds the office.

History. Acts 1993, No. 1111, § 2; 1997, No. 1035, § 3; 2005, No. 1962, § 29.

A.C.R.C. Notes. As originally enacted by Acts 1993, No. 1111, § 2, subdivision

(a)(2) of this section ended “effective July 1, 1993.”

Publisher’s Notes. Acts 1993, No. 1111, § 2, provided, in part, terms of the members of the Criminal Justice Institute Advisory Board for Law Enforcement Management Training and Education would be 4 years with an initial drawing of lots establishing the staggering of terms.

Amendments. The 2005 amendment

deleted former (b); redesignated former (a)(2) and (a)(3) as present (b)(1) and (b)(2); substituted “members appointed pursuant to subdivision (b)(2)(A)(ii)” for “association and institution representatives” in present (b)(2)(A)(iii); in present (b)(2)(C)(i), deleted “of office” following “Terms” and inserted “serving pursuant to subdivision (b)(2)(B)”; and made minor punctuation changes.

12-9-504. Evaluation.

In order to ensure quality control, provide for efficient use of available resources, and minimize duplication of effort, the Criminal Justice Institute shall be the clearinghouse to determine the qualifications of instructors, both academic and practitioner, and to certify all programs of instruction pursuant to this subchapter.

History. Acts 1993, No. 1111, § 4.

12-9-505. Certification and accreditation program.

The Criminal Justice Institute shall develop a certification and accreditation program for all law enforcement supervisors, managers, and heads of police departments and law enforcement agencies.

History. Acts 1993, No. 1111, § 5.

12-9-506. Compensation.

In order to ensure the best available training, education, and programs, the Criminal Justice Institute is authorized to pay honoraria to state, county, and municipal employees upon approval of their supervisors and within their line item salary maximum limits.

History. Acts 1993, No. 1111, § 6.

12-9-507. Staffing procedure.

The Criminal Justice Institute shall submit to the Joint Budget Committee a yearly report reflecting hiring and participation.

History. Acts 1994 (2nd Ex. Sess.), No. 35, § 5; 1997, No. 1035, § 4.

12-9-508. National Center for Rural Law Enforcement Advisory Board.

(a) There is established the National Center for Rural Law Enforcement Advisory Board to address policy issues, provide guidance, and further develop national initiatives.

(b) The members of the board shall be appointed by the Director of the Criminal Justice Institute and approved by the President of the University of Arkansas and shall include:

- (1) The President of the University of Arkansas or his or her designee;
- (2) The Director of the Criminal Justice Institute;
- (3) A member of the House of Representatives;
- (4) A member of the Senate;
- (5) Two (2) executives with law enforcement experience;
- (6) A national-level executive with law enforcement experience;
- (7) A prominent academician; and
- (8) A nationally prominent citizen.

History. Acts 2005, No. 1962, § 30.

SUBCHAPTER 6 — LAW ENFORCEMENT OFFICER EMPLOYMENT, APPOINTMENT, OR SEPARATION

SECTION.

12-9-601. Definitions.

12-9-602. Notice of employment, appointment, or separation — Response by the law enforce-

SECTION.

ment officer — Duty of commission.

12-9-603. Certification review.

12-9-601. Definitions.

As used in this subchapter:

- (1) "Commission" means the Arkansas Commission on Law Enforcement Standards and Training; and
- (2) "Employing agency" means any state agency or any county, municipality, or other political subdivision of the state, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as law enforcement officers.

History. Acts 1997, No. 949, § 1.

12-9-602. Notice of employment, appointment, or separation — Response by the law enforcement officer — Duty of commission.

(a)(1)(A) An employing agency shall immediately notify the Arkansas Commission on Law Enforcement Standards and Training in writing, on a form adopted by the commission, of the employment or appointment, or separation from employment or appointment, of any law enforcement officer.

(B) The employing agency must maintain the original form and submit, or electronically transmit, a copy of the form to the commission.

(2) Separation from employment or appointment includes any firing, termination, resignation, retirement, or voluntary or involuntary extended leave of absence of any law enforcement officer.

(b)(1)(A) In a case of separation from employment or appointment, the employing agency shall execute and maintain an affidavit-of-separation form adopted by the commission, setting forth in detail the facts and reasons for such separation.

(B) A copy of the affidavit-of-separation form must be submitted, or electronically transmitted, to the commission.

(C) The affidavit must be executed under oath and subject to the provisions of § 5-53-103 concerning false swearing.

(2) In a case of a separation from employment or appointment for one (1) of the following reasons, the notice shall state that:

(A) The law enforcement officer was separated for his or her failure to meet the minimum qualifications for employment or appointment as a law enforcement officer;

(B) The law enforcement officer was dismissed for a violation of state or federal law;

(C) The law enforcement officer was dismissed for a violation of the regulations of the law enforcement agency; or

(D) The law enforcement officer resigned while he or she was the subject of a pending internal investigation.

(3) Any law enforcement officer who has separated from employment or appointment must be permitted to respond to the separation, in writing, to the commission, setting forth the facts and reasons for the separation as he or she understands them.

(c)(1) Before employing or appointing a law enforcement officer, a subsequent employing agency must contact the commission to inquire as to the facts and reasons a law enforcement officer became separated from any previous employing agency.

(2) The commission shall, upon request and without prejudice, provide to the subsequent employing agency all information that is required under subsections (a) and (b) of this section and that is in its possession.

(d)(1) An administrator of an employing agency who discloses information pursuant to this section is immune from civil liability for such disclosure or its consequences.

(2) No employing agency shall be civilly liable for disclosure of information under this subchapter or performing any other duties under this subchapter.

(e)(1) The commission, its members, and its employees who disclose information pursuant to this section are immune from civil liability for such disclosure or its consequences.

(2) The commission, its members, and its employees shall not be civilly liable for:

(A) Disclosure of information under this subchapter; or

(B) Performing any other duties under this subchapter.

12-9-603. Certification review.

The Arkansas Commission on Law Enforcement Standards and Training shall review the certification of a law enforcement officer to determine whether the certification should be suspended or revoked if an employing agency reports the law enforcement officer was separated from employment or appointment for one (1) of the reasons specified in § 12-9-602(b)(2).

History. Acts 1997, No. 949, § 1.

CHAPTER 10

COMMUNICATIONS SYSTEMS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. STATEWIDE RADIO COMMUNICATIONS SYSTEM.
3. ARKANSAS PUBLIC SAFETY COMMUNICATIONS ACT OF 1985.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — STATEWIDE RADIO COMMUNICATIONS SYSTEM

SECTION.

- 12-10-201. Definitions.
- 12-10-202. Transmissions by unauthorized persons — Penalty.
- 12-10-203. Policy committee.
- 12-10-204. Special conditions for use of statewide emergency frequency.

SECTION.

- 12-10-205. Frequency allocation.
- 12-10-206. Assigned county operating frequency.
- 12-10-207. Interfacing the Department of Arkansas State Police Communications System.
- 12-10-208. Official transmissions only.

Effective Dates. Acts 1979, No. 520, § 9: Mar. 21, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that a problem of crisis proportion exists on the misuse of radio frequencies assigned to Arkansas law enforcement officers. Therefore, an

emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace, health, and safety of the citizens of Arkansas shall be in full force and effect from and after its passage and approval."

12-10-201. Definitions.

As used in this subchapter:

(1) "Assigned county frequency" means a frequency assigned to a specific county sheriff's office for carrying on day-to-day operations within the county. This frequency is allocated for use by the specific

county-based stations and mobile units which are participating in the statewide communications system;

(2) “High band communication system” means frequencies assigned to larger municipal police departments and the county sheriffs’ offices of Pulaski County, Garland County, and Sebastian County. The high band communication system frequencies shall be between 150 megahertz (MHz) and 175 megahertz (MHz);

(3) “Law enforcement agency” means the county sheriff’s department, municipal police department, or city marshal;

(4) “Statewide base-to-base frequency” means a common statewide frequency for carrying on routine business between agencies located in different counties. This frequency is allocated for base station use only. Mobile units are not allowed to operate on this frequency. The statewide base-to-base frequency shall be 37.20 megahertz (MHz); and

(5) “Statewide emergency frequency” means a common statewide frequency for use in an emergency situation between law enforcement agencies. This frequency is allocated for use by all participating agency-based stations and mobile units. The statewide emergency frequency shall be 37.24 megahertz (MHz).

History. Acts 1979, No. 520, § 1; A.S.A. 1947, § 42-1101.

12-10-202. Transmissions by unauthorized persons — Penalty.

(a) It shall be unlawful to transmit over a frequency assigned to a law enforcement agency or department unless it has been approved by the agency or department head or his or her designee.

(b) Violation of this or any other portion of this subchapter shall constitute a Class A misdemeanor.

History. Acts 1979, No. 520, § 8; A.S.A. 1947, § 42-1108; Acts 1987, No. 251, § 1.

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

12-10-203. Policy committee.

(a) A seven-member policy committee composed of two (2) representatives each from the Arkansas Sheriffs Association, the Arkansas Chiefs of Police Association, and the Arkansas Law Enforcement Officers Association and one (1) representative from the Department of Arkansas State Police will be responsible for policy making and for policing a statewide communication system.

(b) Members of the policy committee will be appointed by the presidents of the respective law enforcement associations and the Director of the Department of Arkansas State Police.

History. Acts 1979, No. 520, § 6; A.S.A. 1947, § 42-1106.

12-10-204. Special conditions for use of statewide emergency frequency.

The following constitute conditions whereby the emergency frequency can be used if assistance from other counties or the Department of Arkansas State Police is needed:

- (1) A potential life or death situation such as:
 - (A) A serious traffic accident involving personal injury;
 - (B) Major danger to life from chemicals, explosives, gas, or nuclear or other hazardous material; or
 - (C) Implementing rescue efforts;
- (2) A felony in progress or pursuing a felon or suspected felon;
- (3) A civil disorder;
- (4) A natural disaster;
- (5) Emergency access to the nearest national crime information center or criminal justice information system computer terminal involving information as needed for subdivision (2) of this section; or
- (6) A mobile unit traveling outside its assigned county for conducting official business with law enforcement agencies in that jurisdiction.

History. Acts 1979, No. 520, § 4; A.S.A. 1947, § 42-1104.

12-10-205. Frequency allocation.

- (a) The assigned county operating frequency will be used for:
 - (1) Base-to-mobile and mobile-to-mobile unit transmissions within each county;
 - (2) Base-to-base radio transmissions within those counties which have more than one (1) base station operating on the county frequency;
 - (3) Emergency transmission using a 1033 code within each county when assistance from other counties or the Department of Arkansas State Police is not needed; and
 - (4)(A) With permission of the county sheriffs concerned, adjacent counties may allow each other's mobile units to install, receive, and transmit crystals and operate, when necessary, on each other's assigned county operating frequency.
(B) In lieu of the preceding, adjacent county law enforcement mobile units may install receivers or scanners on each other's assigned county frequency in order to have cross band communication capability with each other.
- (b) The statewide base-to-base frequency, 37.20 megahertz (MHz), will be used for:
 - (1) All routine base-to-base law enforcement radio transmissions between city and county and law enforcement agencies located in different counties. It can also be used for a base-to-base radio transmission in the same county when necessary; and
 - (2) Routine access to the nearest state police district headquarters and the nearest national crime information center or criminal justice information system computer terminal.

(c)(1) The statewide emergency frequency, 37.24 megahertz (MHz), will be used under special conditions found in § 12-10-204 and when radio contact between various law enforcement base stations or mobile units is mandatory for the preservation of peace or the protection of life and property.

(2) The statewide emergency frequency may be used by law enforcement agencies within their assigned jurisdiction in the event of a breakdown on the county operating frequency or the statewide base-to-base frequency, only as an interim measure in lieu of the assigned county operating frequency or the statewide base-to-base frequency, if all three (3) of the following conditions are met:

(A) The breakdown has occurred on a base station. Mobile unit breakdowns on the county frequency will not be cause for use of the emergency frequency;

(B) Maximum efforts are exerted in getting the broken-down base station back on the air; and

(C) All surrounding counties are to be advised as to why the emergency frequency is being used in lieu of the county operating frequency or statewide base-to-base frequency and an approximate time as to when this condition will be corrected.

History. Acts 1979, No. 520, § 2; A.S.A. 1947, § 42-1102.

12-10-206. Assigned county operating frequency.

The following counties shall be assigned the following frequencies:

(1) 37.04 megahertz (MHz): Calhoun, Chicot, Clark, Faulkner, Fulton, Little River, Monroe, Newton, Poinsett, and Scott;

(2) 37.06 megahertz (MHz): Ashley, Benton, Cleburne, Columbia, Cross, Jefferson, Howard, Logan, Marion, and Randolph;

(3) 37.08 megahertz (MHz): Baxter, Clay, Drew, Lonoke, Ouachita, Sevier, and Yell;

(4) 37.12 megahertz (MHz): Craighead, Dallas, Desha, Madison, Polk, Prairie, and Stone;

(5) 37.14 megahertz (MHz): Carroll, Hot Spring, Lawrence, Lee, Lincoln, and Van Buren;

(6) 37.16 megahertz (MHz): Arkansas, Boone, Crittenden, Nevada, Perry, and Sharp;

(7) 37.28 megahertz (MHz): Grant, Greene, Johnson, Lafayette, Montgomery, Phillips, and White;

(8) 37.32 megahertz (MHz): Cleveland, Conway, Franklin, Independence, Pike, and St. Francis;

(9) 37.36 megahertz (MHz): Bradley, Crawford, Izaard, Mississippi, Pope, Saline, and Woodruff;

(10) 37.40 megahertz (MHz): Jackson, Hempstead, Searcy, and Union; and

(11) 37.42 megahertz (MHz): Sebastian.

History. Acts 1979, No. 520, § 3; A.S.A. 1947, § 42-1103.

12-10-207. Interfacing the Department of Arkansas State Police Communications System.

In order to interface the separate Department of Arkansas State Police Communications System with that of the statewide law enforcement communications system:

(1) All municipal and county law enforcement agencies should install receivers on the frequency of the district of the Department of Arkansas State Police in which their county or city is located, at their base stations and in their vehicles so that effective cross banding of communications with the department can be accomplished when necessary;

(2) All department district headquarters will monitor the statewide base-to-base frequency, 37.20 megahertz (MHz), and the statewide emergency frequency, 37.24 megahertz (MHz), and respond to calls by transmitting on the frequency of the district of the department in which their county or city is located, which will be monitored by local law enforcement agencies;

(3) All department mobile units will have the capability to monitor the emergency frequency, 37.24 megahertz (MHz), and respond to calls by transmitting on the frequency of the district of the department in which their county or city is located, which will be monitored by local law enforcement agencies; and

(4) With the permission of the department, counties may, at their own expense, place complete mobile radios with the assigned county frequency in department vehicles.

History. Acts 1979, No. 520, § 5; A.S.A. 1947, § 42-1105.

12-10-208. Official transmissions only.

(a) All radio transmissions should be used for conducting official law enforcement business only and should be as clear and concise as possible.

(b) Standard "ten" signals and the phonetic alphabet are recommended for use by all participating agencies.

History. Acts 1979, No. 520, § 7; A.S.A. 1947, § 42-1107.

SUBCHAPTER 3 — ARKANSAS PUBLIC SAFETY COMMUNICATIONS ACT OF 1985

SECTION.

12-10-301. Title.

12-10-302. Legislative findings, policy, and purpose.

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SECTION.

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- 12-10-308. Response to requests for emergency response outside jurisdiction.
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SECTION.

- 12-10-318. Emergency telephone service charges — Imposition — Liability.
- 12-10-319. Emergency telephone service charges — Reduction, suspension, etc.
- 12-10-320. Emergency telephone service charges — Duties, rights, liability, etc., of service supplier.
- 12-10-321. 911 centers — Bonds.
- 12-10-322. 911 centers — Federal, state, local, etc., funds.
- 12-10-323. Authorized expenditures of revenues.
- 12-10-324. Response to call — Entrance procedures.

A.C.R.C. Notes. References to “this subchapter” in §§ 12-10-301 — 12-10-323 may not apply to § 12-10-324 which was enacted subsequently.

Cross References. Public utilities and carriers, § 23-1-101 et seq.

Effective Dates. Acts 1985, No. 683, § 12: Mar. 27, 1985. Emergency clause provided: “It has been found and declared by the General Assembly of the State of Arkansas that there is an immediate need for designation of the 9-1-1 Emergency Telephone Number and creation of 9-1-1 Public Safety Communications Centers in order to enable response of emergency services which protect life and property to be accessed in a prompt and simplified manner and that enactment of this bill will hasten the availability of these services. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall take effect from and after the date of its approval.”

Acts 1991, No. 1196, § 9: July 1, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided,

and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991.”

Acts 1995, No. 627, § 5: Mar. 14, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that political subdivisions with less than fifteen thousand (15,000) population are not able to provide a 911 service under the current restrictions on emergency telephone service charges; that this act grants greater flexibility to those political subdivisions; and that this act should go into effect as soon as possible in order to help provide 911 service to the portions of this state which do not now have the capability of financing the same. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 106, § 5: Feb. 6, 1997. Emergency clause provided: “It is hereby

found and determined by the General Assembly that political subdivisions with less than twenty-five thousand (25,000) population are not able to provide a 911 service under the current restrictions on emergency telephone service charges; that this act grants greater flexibility to those political subdivisions; and that this act should go into effect as soon as possible in order to help provide 911 service to the portions of this state which do not now have the capability of financing the same. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 952, § 6: Mar. 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that political subdivisions with less than twenty-seven thousand five hundred population are not able to provide a 911 service under the current restrictions on emergency telephone service charges; that this act grants greater flexibility to those political subdivisions; and that this act should go into effect as soon as possible in order to help provide 911 service to the portions of this state which do not now have the capability of financing the same. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 46, § 5: Feb. 11, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that there is an immediate need for the proportionate and speedy disbursement of funds to public

safety answering point (PSAP) administrators; that such proportionate disbursement of funds will better enable PSAP administrators to ensure that CMRS calls are properly answered and disposed of; that this act will better enable a prompt response to 911 service calls resulting in the protection of life and property; that until this act goes into effect the citizens of this State will be denied the protection better afforded by it. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 907, § 3: amendment effective by its own terms on Aug. 1, 2002.

Acts 2003, No. 1792, § 2: Apr. 22, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that existing CMRS emergency telephone service charges collected are insufficient to allow some political subdivisions serving as default public safety answering points or experiencing high volumes of commuter traffic to recover their costs incurred in properly answering 911 emergency calls and that this act is immediately necessary to ensure adequate 911 emergency service continues to be provided. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 582, § 3: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that declining landline 911 surcharges have caused an immediate loss of revenues for public safety answering points and additional

revenues are vital to the continuing operations of those public safety answering points. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1480, § 117: July 31, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas

election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-10-301. Title.

This subchapter may be cited as the "Arkansas Public Safety Communications Act of 1985".

History. Acts 1985, No. 683, § 1; A.S.A. 1947, § 73-1822.

12-10-302. Legislative findings, policy, and purpose.

(a) It has been determined to be in the public interest to shorten the time and simplify the method required for a citizen to request and receive emergency aid.

(b) The provision of a single, primary three-digit emergency number through which fire suppression, rescue, disaster and major emergency, emergency medical, and law enforcement services may be quickly and efficiently obtained will provide a significant contribution to response by simplifying notification of these emergency service responders. A simplified means of procuring these emergency services will result in saving of life, a reduction in the destruction of property, quicker apprehension of criminals, and ultimately the saving of moneys.

(c) Establishment of a uniform emergency telephone number is a matter of concern to all citizens.

(d) The emergency number 911 has been made available at the national level for implementation throughout the United States and Canada.

(e) It is found and declared necessary to:

(1) Establish the National Emergency Number 911 (nine, one, one) as the primary emergency telephone number for use in participating political subdivisions of the State of Arkansas;

(2) Authorize each chief executive to direct establishment and operation of 911 public safety communications centers in their political subdivisions and to designate the location of a 911 public safety communications center and agency which is to operate the center. As both are elected positions, a county judge must obtain concurrence of the county sheriff;

(3) Encourage the political subdivisions to implement 911 public safety communications centers; and

(4) Provide a method of funding for the political subdivisions which will allow them to implement, operate, and maintain a 911 public safety communications center.

History. Acts 1985, No. 683, § 2; A.S.A. 1947, § 73-1823.

CASE NOTES

Cited: West Wash. County Emergency Medical Servs. v. Washington County, 967 F.2d 1252 (8th Cir. 1992).

12-10-303. Definitions.

As used in this subchapter:

(1) "Automatic location identification" means an enhanced 911 service capability that enables the automatic display of information defining the geographical location of the telephone used to place the 911 call;

(2) "Automatic number identification" means an enhanced 911 service capability that enables the automatic display of the ten-digit number used to place a 911 call from a wire line, wireless, voice over internet protocol, or any nontraditional phone service;

(3) "Basic 911 system" means a system by which the various emergency functions provided by public and private safety agencies within each political subdivision may be accessed utilizing the three-digit number 911, but no available options are included in the system;

(4) "Board" means the Arkansas Emergency Telephone Services Board created by this subchapter;

(5) "Chief executive" means the Governor, county judges, mayors, city managers, or city administrators of incorporated places, and is synonymous with head of government, dependent on the level and form of government;

(6) "CMRS connection" means each account or number assigned to a CMRS customer;

(7)(A) "Commercial mobile radio service" or "CMRS" means commercial mobile service under §§ 3(27) and 332(d), Federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993.

(B)(i) “Commercial mobile radio service” or “CMRS” includes any wireless, two-way communication device, including radio-telephone communications used in cellular telephone service, personal communication service, or the functional and competitive or functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, or a network radio access line.

(ii) “Commercial mobile radio service” or “CMRS” does not include services whose customers do not have access to 911 or a 911-like service, a communication channel suitable only for data transmission, a wireless roaming service or other nonlocal radio access line service, or a private telecommunications system;

(8) “Dispatch center” means a public or private agency that dispatches public or private safety agencies but does not operate a 911 public safety answer point;

(9) “Enhanced 911 network features” means those features of selective routing that have the capability of automatic number and location identification;

(10)(A) “Enhanced 911 system” means enhanced 911 service, which is a telephone exchange communications service consisting of telephone network features and public safety answering points designated by the chief executive that enables users of the public telephone system to access a 911 public safety communications center by dialing the digits “911”.

(B) The service directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification;

(11) “Exchange access facilities” means all lines provided by the service supplier for the provision of local exchange service, as defined in existing general subscriber services tariffs;

(12) “Governing authority” means county quorum courts and governing bodies of municipalities;

(13) “911 public safety communications center” means the communications center operated on a twenty-four-hour basis by one (1) of the operating agencies defined by this subchapter and as designated by the chief executive of the political subdivision that includes the public safety answering point and dispatches one (1) or more public safety agencies;

(14) “Nontraditional phone service” means any service that:

(A) Enables real-time voice communications from the user’s location to customer premise equipment;

(B) Permits users to receive calls that originate on the public switched telephone network or to terminate calls to the public switched telephone network; and

(C) Has the capability of placing a 911 call;

(15) “Nontraditional phone service connection” means each account or number assigned to a nontraditional phone service customer;

(16)(A) "Operating agency" means the public safety agency authorized and designated by the chief executive of the political subdivision to operate a 911 public safety communications center.

(B) Operating agencies are limited to offices of emergency services, fire departments, and law enforcement agencies of the political subdivisions;

(17) "Prepaid wireless telephone service" means a wireless telephone service:

(A) For which no monthly invoices are issued; and

(B) Which is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminate:

(i) Upon use by the customer and delivery by a CMRS provider or reseller of an agreed upon amount of service corresponding to the total dollar amount paid in advance; or

(ii) Within a certain period of time following the initial purchase or activation unless additional payments are made;

(18) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or emergency medical services;

(19) "Public safety agency" means an agency of the State of Arkansas or a functional division of a political subdivision that provides firefighting, rescue, natural, or human-caused disaster or major emergency response, law enforcement, and ambulance or emergency medical services;

(20) "Public safety answering point" means the location at which 911 calls are initially answered;

(21) "Public safety officers" means specified personnel of public safety agencies;

(22) "Readiness costs" means equipment and payroll costs associated with equipment, call takers, and dispatchers on standby waiting for 911 calls;

(23) "Service supplier" means any person, company, or corporation, public or private, providing exchange telephone service or CMRS service throughout the political subdivision;

(24) "Selective routing" means the method employed to direct 911 calls to the appropriate public safety answering point based on the geographical location from which the call originated;

(25) "Service user" means any person, company, corporation, business, association, or party not exempt from county or municipal taxes or utility franchise assessments who is provided landline telephone service, CMRS service, voice over internet protocol service, or any non-traditional phone service with the capability of placing a 911 call in the political subdivision;

(26)(A) "Tariff rate" means the rate or rates billed by a service supplier as stated in the service supplier's tariffs and approved by the Arkansas Public Service Commission, which represents the service supplier's recurring charges for exchange access facilities, exclusive of all:

- (i) Taxes;
- (ii) Fees;
- (iii) Licenses; or
- (iv) Similar charges whatsoever.

(B) The tariff rate per county may include extended service area charges only if an emergency telephone service charge has been levied in a county and a resolution of intent has been passed by a county's quorum court that defines tariff rate as being inclusive of extended service area charges;

(27) "Voice over internet protocol connection" means each account or number assigned to a voice over internet protocol customer;

(28) "Voice over internet protocol service" means any service that:

- (A) Enables real-time voice communications;
- (B) Requires a broadband connection from the user's location;
- (C) Requires internet protocol compatible customer premise equipment;

(D) Permits users to receive calls that originate on the public switched telephone network or to terminate calls to the public switched telephone network; and

(E) Has the capability of placing a 911 call; and

(29) "Wireless telecommunications service provider" means a provider of commercial mobile radio services:

(A) As defined in 47 U.S.C. § 332(b), as it existed on January 1, 2006, including all broadband personal communications services, wireless radio telephone services, geographic-area-specialized and enhanced-specialized mobile radio services, and incumbent, wide area, specialized mobile radio licensees that offer real-time, two-way voice service interconnected with the public switched telephone network; and

(B) That either:

- (i) Is doing business in the State of Arkansas; or
- (ii) May connect with a public safety communications center.

History. Acts 1985, No. 683, § 3; A.S.A. 1947, § 73-1824; Acts 1997, No. 810, § 1; 2003, No. 668, § 1; 2007, No. 582, § 1; 2009, No. 1221, § 1.

Amendments. The 2007 amendment added the subdivision designations; in (2), substituted "ten-digit" for "seven-digit" and added "from a wire line, wireless, voice over internet protocol, or any non-traditional phone service"; substituted "Arkansas" for "CMRS" in (4); inserted

present (14), (15), and (17) and redesignated the remaining subsections accordingly; in (24), substituted "landline telephone service, CMRS service, voice over internet protocol service, or any non-traditional phone service with the capability of placing a 911 call" for "telephone service or" and made a related change; and added (26), (27) and (28).

The 2009 amendment added present (22).

12-10-304. 911 communications centers — Creation.

(a) The chief executive of each political subdivision shall determine if a 911 public safety communications center should be created and, if

such a center is created, will designate the operating agency for the political subdivision.

(b) The chief executive of each political subdivision may authorize or direct that a 911 public safety communications center be created or designate an existing dispatch center as the 911 public safety communications center for the political subdivision.

(c) The 911 public safety communications center shall be the public safety answering point of the political subdivision and may serve as the public safety answering point for other political subdivisions as authorized in § 12-10-305.

History. Acts 1985, No. 683, §§ 4, 7;
A.S.A. 1947, §§ 73-1825, 73-1828.

12-10-305. Multiagency and multijurisdictional answering points or centers.

(a)(1) The chief executive of the political subdivision may designate the 911 public safety communications center of another political subdivision either to serve his or her political subdivision as public safety answering point only and retain one (1) or more dispatch centers or to serve both public safety answering point and dispatch functions.

(2) This designation shall be in the form of a written mutual aid agreement between the political subdivisions and will include the stipulation of the fair share of funding to be contributed by the political subdivision being served to the political subdivision operating the 911 public safety communications center.

(3) Part or all of the moneys necessary for the fair share of funding may be generated as authorized in §§ 12-10-318, 12-10-319, 12-10-321, 12-10-322, and by the emergency telephone service charge collected by the service supplier and paid by them directly to the political subdivision operating the 911 public safety communications center.

(4) If such a designation and mutual aid agreement has been made, an additional 911 communications center may not be created without official termination of the mutual aid agreement.

(b) Any 911 public safety communications center established pursuant to this subchapter may serve the jurisdiction of more than one (1) public agency of the political subdivision or, through proper agreements, more than one (1) political subdivision.

(c) No provision of this subchapter shall be construed to prohibit or discourage in any manner the formation of multiagency or multijurisdictional public safety answering points.

History. Acts 1985, No. 683, §§ 2, 4;
A.S.A. 1947, §§ 73-1823, 73-1825.

12-10-306. Public safety communications personnel.

(a) The staff and supervisors of the 911 public safety communications center and systems shall be:

(1) Paid employees, either sworn officers or civilians, of the operating agency designated by the chief executive of the political subdivisions. Personnel other than law enforcement or fire officers will be considered public safety officers for the purposes of public safety communications;

(2) Required to submit to employment background investigations for security clearances prior to accessing files available through the Arkansas Crime Information Center if the center is charged with information service functions for criminal justice agencies of the political subdivision;

(3) Trained in operation of 911 system equipment and other training as necessary to operate a 911 public safety communications center;

(4) Subject to the authority of the chief executive through their agency; and

(5)(A) Required to immediately release without the consent or approval of any supervisor or other entity any information in their custody or control to a prosecuting attorney if requested by a subpoena issued by a prosecutor, grand jury, or any court for use in the prosecution or the investigation of any criminal or suspected criminal activity.

(B) The staff or supervisor of a 911 public safety communications center, an operating agency, and the service supplier are not liable in any civil action as a result of complying with a subpoena as required in subdivision (a)(5)(A) of this section.

(b)(1) In order to attract and retain professional communications personnel to supervise and operate 911 public safety communications centers and systems, staffing plans are recommended to be based on the level of service, population of the service area, and other duties of the center.

(2) Compensatory and retirement plans and levels of supervision for 911 public safety communications centers employing personnel who are not sworn law enforcement personnel or firefighters are recommended to be comparable to public safety officers of similar levels of responsibility of the political subdivision.

History. Acts 1985, No. 683, § 8; A.S.A. 1947, § 73-1829; Acts 2007, No. 651, § 1; 2009, No. 165, § 1. The 2009 amendment inserted “911” in (a)(5)(B), and made a minor stylistic change.

Amendments. The 2007 amendment added (a)(5).

12-10-307. Transmission of requests.

Each 911 public safety communications center shall be capable of transmitting requests for law enforcement, firefighting, disaster, or major emergency response, emergency medical or ambulance services, or other emergency services to a public or private safety agency that

provides the requested services where such services are available to the political subdivision.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828.

12-10-308. Response to requests for emergency response outside jurisdiction.

(a) A 911 public safety communications center which receives a request for emergency response outside its jurisdiction shall promptly forward the request to the public safety answering point or public safety agency responsible for that geographical area.

(b) Any emergency unit dispatched to a location outside its jurisdiction in response to such a request shall render service to the requesting party until relieved by the public safety agency responsible for that geographical area.

(c) Political subdivisions may enter into mutual aid agreements to carry out the provisions of this section.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828.

12-10-309. Requests from the hearing and speech impaired.

Each 911 public safety communications center shall be equipped with a system for the processing of requests from the hearing and speech impaired for emergency response.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828.

12-10-310. Records of calls.

(a) The 911 public safety communication center shall develop and maintain a system for recording 911 calls received at the public safety answering point. A magnetic tape will satisfy this requirement.

(b) The records shall be retained for a period of at least thirty-one (31) days from the date of the call and shall include the following information:

- (1) Date and time the call was received;
- (2) The nature of the problem; and
- (3) Action taken by the 911 public safety communication center personnel.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828.

12-10-311. Methods of response.

The 911 public safety communication center shall operate utilizing at least one (1) of the following four (4) methods in response to emergency calls:

(1) “Direct dispatch method”, which is a telephone service to a 911 public safety communication center and, upon receipt of a 911 telephone request for service, a decision as to the proper action to be taken shall be made and the appropriate emergency responder dispatched;

(2) “Relay method”, which is a telephone service whereby pertinent information is noted by the recipient of a 911 telephone request for emergency services and is relayed to appropriate public safety agencies or other providers of emergency services for dispatch of an emergency service unit;

(3) “Transfer method”, which is a telephone service which, upon receipt of a 911 telephone request for emergency service, directly transfers such requests to an appropriate public safety agency or other provider of emergency services for their dispatch center to perform the dispatch operation; or

(4) “Referral method”, which is a telephone service which, upon the receipt of a 911 telephone request for emergency service, provides the requesting party with the telephone number of the appropriate public safety agency or other provider of emergency services.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828.

12-10-312. Restricted use of 911.

The telephone number 911 is restricted to emergency calls that may result in dispatch of the appropriate response for fire suppression and rescue, emergency medical services or ambulance, hazardous material incidents, disaster or major emergency occurrences, and law enforcement activities.

History. Acts 1985, No. 683, § 9; A.S.A. 1947, § 73-1830; Acts 2005, No. 1962, § 31. **Amendments.** The 2005 amendment inserted “incidents.”

12-10-313. Nonemergency telephone number.

(a) Each 911 public safety communication center will maintain a published nonemergency telephone number and nonemergency calls should be received on that number.

(b) Transfers of calls from 911 trunks to nonemergency numbers are discouraged because that ties up 911 trunks and may interfere with true emergency calls.

(c) A call-back number should be taken or the caller informed of the proper nonemergency number.

History. Acts 1985, No. 683, § 9; A.S.A. 1947, § 73-1830.

12-10-314. Connection of network to automatic alarms, etc., prohibited.

No person shall connect to a service supplier's network any automatic alarm or other automatic alerting devices which cause the number 911 to be automatically dialed and provides a prerecorded message in order to directly access the services which may be obtained through a 911 public safety communication center.

History. Acts 1985, No. 683, § 9; A.S.A. 1947, § 73-1830.

12-10-315. False alarm, complaint, or information — Penalty.

Any person calling the number 911 for the purpose of making a false alarm or complaint and reporting false information which could result in the emergency dispatch of any public safety or private safety agency as defined in this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 1985, No. 683, § 10; A.S.A. 1947, § 73-1831.

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

12-10-316. 911 centers — Access to information.

(a) A 911 public safety communications center designated by the chief executive of the political subdivision may be considered an element in the communications network connecting state, county, and local authorities to a centralized state depository of information in order to serve the public safety and criminal justice community.

(b)(1) A 911 public safety communications center is restricted in that it may access files in the centralized state depository of information only for the purpose of providing information to:

(A) An end user as authorized by state law; and

(B) An authorized recipient of the contents of those files, in the absence of serving as an information service agency.

(2) A 911 public safety communications center shall not have access to files available through the Arkansas Crime Information Center.

(c) The designation as an information provider to an authorized recipient and an agency of a political subdivision shall be made by the chief executive of each political subdivision.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828; Acts 2005, No. 1962, § 32.

Amendments. The 2005 amendment inserted the (1), (1)(A), (1)(B) and (2) designations in (b) and made related changes; in present (b)(1), deleted "these" preceding

"files" and inserted "in the centralized state depository of information"; in present (b)(2), added "The 911 public safety communication centers" and substituted "shall" for "will" and "have" for "be authorized"; and made minor stylistic changes.

12-10-317. 911 center — Operation — Rights, duties, liabilities, etc., of service providers.

(a)(1) Each service provider shall forward to any public safety answering point equipped for enhanced 911 service the telephone number and street address of any telephone used to place a 911 call.

(2) Subscriber information provided in accordance with this subsection shall be used only for the purpose of responding to requests for emergency service from public or private safety agencies, for the investigation of false or intentionally misleading reports of incidents requiring emergency service response, or for other lawful purposes.

(3) No service provider, agents of a service provider, political subdivision, or officials or employees of a political subdivision shall be liable to any person who uses the enhanced 911 service established under this subchapter for release of the information specified in this section or for failure of equipment or procedure in connection with enhanced 911 service or basic 911 service.

(b) The 911 public safety communication center shall be notified in advance by an authorized service provider representative of any routine maintenance work to be performed which may affect the 911 system reliability or capacity. Any such work shall be performed during public safety answering point off-peak hours.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828.

12-10-318. Emergency telephone service charges — Imposition — Liability.

(a)(1)(A) When so authorized by a majority of the persons voting within the political subdivision in accordance with the law, the governing authority of each political subdivision may levy an emergency telephone service charge in the amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or the amount up to five percent (5%) of the tariff rate, except that any political subdivision with a population of fewer than twenty-seven thousand five hundred (27,500) according to the 1990 Federal Decennial Census may, by a majority vote of the electors voting on the issue, levy an emergency telephone charge in an amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or an amount up to twelve percent (12%) of the tariff rate.

(B) The governing authority of a political subdivision that has been authorized under subdivision (a)(1)(A) of this section to levy an emergency telephone service charge in an amount up to twelve percent (12%) of the tariff rate may decrease the percentage rate to not less than four percent (4%) of the tariff rate for those telephone service users that are served by a telephone company with fewer than two hundred (200) access lines in this state as of the date of the election conducted under subdivision (a)(1)(A) of this section.

(2) Upon its own initiative, the governing authority of the political subdivision may call such a special election to be held in accordance with § 7-11-201 et seq.

(b)(1)(A)(i) There is levied a commercial mobile radio service emergency telephone service charge in an amount of sixty-five cents (65¢) per month per commercial mobile radio service connection that has a place of primary use within the State of Arkansas.

(ii)(a) A commercial mobile radio service provider may determine, bill, collect, and retain an additional amount to reimburse the commercial mobile radio service provider for enabling and providing 911 and enhanced 911 services and capability in the network and for the facilities and associated equipment.

(b) The commercial mobile radio service provider may add any amounts implemented under this subdivision (b)(1)(A)(ii) to the sixty-five cents (65¢) levied in subdivision (b)(1)(A)(i) of this section so that the commercial mobile radio service emergency telephone service charges appear as a single line item on a subscriber's bill.

(B)(i) There is levied a service charge of sixty-five cents (65¢) per month on prepaid wireless telephone service subscribers whose mobile set telephone numbers are assigned to the State of Arkansas.

(ii) Providers of prepaid wireless telephone service shall collect and remit the service charge under one (1) of the following methods:

(a) The CMRS provider shall collect on a monthly basis the sixty-five cents (65¢) service charge from each prepaid wireless telephone service customer whose account balance is equal to or greater than the amount of the service charge; or

(b) The CMRS provider shall divide the total earned prepaid wireless telephone service revenue received by the CMRS provider with respect to each prepaid wireless telephone service customer in the state within the monthly 911 reporting period by fifty dollars (\$50.00) and multiply the quotient by the service charge amount.

(iii) In the case of prepaid wireless telephone service:

(a) The monthly wireless 911 surcharge imposed by this subdivision (b)(1)(B) shall be remitted based upon each prepaid wireless telephone associated with this state for each wireless service customer that has a sufficient positive balance as of the last day of each month;

(b) The surcharge shall be remitted in any manner consistent with the wireless provider's existing operating or technological abilities, such as customer address, location associated with the mobile telephone number, or reasonable allocation method based upon other comparable relevant data; and

(c)(1) If direct billing is not feasible, the prepaid subscriber's account may be reduced by the surcharge amount or an equivalent number of minutes.

(2) However, collection of the wireless 911 surcharge under this subdivision (b)(1)(B)(iii)(c) does not reduce the sales price for any tax collected at the point of sale.

(C) There is levied a voice over internet protocol emergency telephone service charge in an amount of sixty-five cents (65¢) per month per voice over internet protocol connection that has a place of primary use within the State of Arkansas.

(D) There is levied a nontraditional telephone service charge in an amount of sixty-five cents (65¢) per month per nontraditional service connection that has a place of primary use within the State of Arkansas.

(E) Except for prepaid wireless telephone service, the service charge levied in subdivision (b)(1)(A) of this section and any additional amounts implemented under subdivision (b)(1)(B) of this section and collected by commercial mobile radio service providers that provide mobile telecommunications services as defined by the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, as in effect on January 1, 2001, shall be collected pursuant to the Mobile Telecommunications Sourcing Act.

(2)(A) The service charges collected under subdivision (b)(1)(A) of this section, less administrative fees under subdivision (c)(3) of this section, shall be remitted to the Arkansas Emergency Telephone Services Board within sixty (60) days after the end of the month in which the fees are collected.

(B) The funds collected pursuant to subdivision (b)(1)(A) of this section shall not be deemed revenues of the state and shall not be subject to appropriation by the General Assembly.

(c)(1) There is established the Arkansas Emergency Telephone Services Board consisting of the following:

(A) The Auditor of State or his or her designated representative;

(B) Two (2) representatives selected by a majority of the commercial mobile radio service providers licensed to do business in the state; and

(C) Two (2) 911 system employees selected by a majority of the public safety answering point administrators in the state.

(2) The responsibilities of the board shall be as follows:

(A) To establish and maintain an interest-bearing account into which will be deposited revenues from the service charges levied under subdivision (b)(1)(A) of this section;

(B) To manage and disburse the funds from the account levied under subdivision (b)(1)(A) of this section in the following manner:

(i) Not less than eighty-three and five-tenths percent (83.5%) of the total monthly revenues collected and remitted under subdivision (b)(1)(A) of this section shall be distributed on a population basis to each political subdivision operating a 911 public safety communications center that has the capability of receiving commercial mobile radio service 911 calls on dedicated 911 trunk lines for expenses incurred for the answering, routing, and proper disposition of 911 calls, including payroll costs, readiness costs, and training costs associated with wireless, voice over internet protocol, and nontraditional 911 calls;

(ii)(a) Not more than fifteen percent (15%) of the total monthly revenues collected and remitted under subdivision (b)(1)(A) of this section shall be held in the interest-bearing account. The board shall report to Legislative Council in the event the sum held under this subdivision becomes less than three million five hundred thousand dollars (\$3,500,000).

(b) These funds may be utilized by the public safety answering points for the following purposes in connection with compliance with the Federal Communications Commission requirements: upgrading, purchasing, programming, installing, and maintaining necessary data, basic 911 GIS mapping, hardware, and software, including any network elements required to supply enhanced 911 phase II cellular, voice over internet protocol, and other nontraditional telephone service.

(c) Invoices must be presented to the board in connection with any request for reimbursement and be approved by a majority vote of the board to receive reimbursement.

(d) Any invoices presented to the board for reimbursements of costs not described by this section may be approved only by a unanimous vote of the board;

(iii) Not more than five-tenths percent (0.5%) of the fees collected under subdivision (b)(1)(A) of this section may be utilized by the board to compensate the independent auditor and for administrative expenses;

(iv) All interest received on funds in the interest-bearing account shall be disbursed as prescribed in subdivision (c)(2)(B)(i) of this section; and

(v)(a) All cities and counties receiving funds under this section shall submit to the board no later than April 1 of each year an explanation and accounting of the funds received and expenditures of those funds for the previous calendar year, along with a copy of the budget for the previous year and a copy of the year-end appropriation and expenditure analysis of any participating or supporting counties, cities, or agencies.

(b)(1) The board may require any other information necessary to ensure the funds have been properly utilized according to this section.

(2) All cities and counties receiving funds under this section shall also submit to the board no later than April 1 of each year, a copy of all documents reflecting the 911 funds received for the previous calendar year, including without limitation wireless, wireline, general revenues, sales taxes, and other sources used by the city or county for 911 services.

(c) Failure to submit the proper accounting information and failure to utilize the funds in a proper manner may result in the suspension or reduction of funding until corrected;

(C)(i) To promulgate regulations necessary to perform its duties prescribed by this subchapter.

(ii) In determining the population basis for distribution of funds under subdivision (c)(2)(B)(i) of this section, the board shall determine, based on the latest federal decennial census, the population of all unincorporated areas of counties operating a 911 public safety communications center that has the capacity of receiving commercial mobile radio service, voice over internet protocol service, or nontraditional 911 calls on dedicated 911 trunk lines and the population of all incorporated areas operating a 911 public safety communications center that has the capability of receiving commercial mobile radio service, voice over internet protocol service, or nontraditional 911 calls on dedicated 911 trunk lines and compare the population of each of those political subdivisions to the total population;

(D) To submit annual reports to the office of the Auditor of State outlining fees collected and moneys disbursed to public safety answering points under subdivision (b)(1)(A) of this section; and

(E)(i) To retain an independent third-party auditor for the purposes of receiving, maintaining, and verifying the accuracy of any proprietary information submitted to the board by commercial mobile radio service providers.

(ii) Due to the confidential and proprietary nature of the information submitted by commercial mobile radio service providers, the information shall be retained by the independent auditor in confidence, shall be subject to review only by the Auditor of State, and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., nor released to any third party.

(iii) The information collected by the independent auditor shall be released only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual commercial mobile radio service provider.

(3) Commercial mobile radio service providers, voice over internet protocol, or other nontraditional communications providers shall be entitled to retain one percent (1%) of the fees collected under subdivision (b)(1)(A) of this section as reimbursement for collection and handling of the charges.

(d)(1) Notwithstanding any other provision of the law, in no event shall any commercial mobile radio, voice over internet protocol service, or nontraditional service provider, or its officers, employees, assigns, or agents be liable for civil damages or criminal liability in connection with the development, design, installation, operation, maintenance, performance, or provision of 911 service.

(2) Nor shall any commercial mobile radio, voice over internet protocol, or nontraditional service provider, its officers, employees, assigns, or agents be liable for civil damages or be criminally liable in connection with the release of subscriber information to any governmental entity as required under the provisions of this subchapter.

(e) The service charge shall have uniform application and shall be imposed throughout the political subdivision to the greatest extent possible in conformity with availability of the service in any area of the political subdivision.

(f)(1) An emergency telephone service charge, except with regard to the commercial mobile radio service emergency telephone service charge, shall be imposed only upon the amount received from the tariff rate exchange access lines.

(2)(A) If there is no separate exchange access charge stated in the service supplier's tariffs, the governing authority shall, except with regard to the commercial mobile radio service emergency telephone service charge, determine a uniform percentage not in excess of eighty-five percent (85%) of the tariff rate for basic exchange telephone service.

(B) This percentage shall be deemed to be the equivalent of tariff rate exchange access lines and shall be used until such time as the service supplier establishes such a tariff rate.

(3)(A) No service charge shall be imposed upon more than one hundred (100) exchange access facilities per person per location.

(B) No service charge shall be imposed upon more than one hundred (100) voice over internet protocol connections per person per location.

(C) Trunks or service lines used to supply service to commercial mobile radio service providers shall not have a service charge levied against them.

(4) Any emergency telephone service charge, including the commercial mobile radio service emergency telephone service charge, shall be added to and may be stated separately in the billing by the service supplier to the service user.

(5) Every billed service user shall be liable for any service charge imposed under this subsection until it has been paid to the service supplier.

(g) The political subdivision may pursue against a delinquent service user any remedy available at law or in equity for the collection of a debt.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826; Acts 1995, No. 627, § 1; 1997, No. 106, § 1; 1997, No. 810, § 2; 1997, No. 952, § 1; 1999, No. 46, § 1; 2001, No. 907, § 3; 2003, No. 111, § 1; 2003, No. 1792, § 1; 2005, No. 1997, § 1; 2005, No. 2145, § 16; 2007, No. 582, § 2; 2007, No. 1049, § 33; 2009, No. 1221, § 2; 2009, No. 1480, § 48.

A.C.R.C. Notes. Pursuant to § 1-2-207, subdivision (a)(2) of this section is set out as amended by Acts 2007, No. 1049, § 33. Acts 2007, No. 582, § 2 amended former subdivision (a)(2)(B)(i) to read as follows: "The special election shall occur on the second Tuesday of any month unless the second Tuesday of the month is a legal holiday in which event the special election shall be held on the third Tuesday of the month."

As enacted by Acts 2009, No. 1221, § 2,

the last sentence of subdivision (c)(2)(b)(ii)(a) of this section reads: "The board shall report to Legislative Council in the event the sum held under this subdivision becomes less than three million five hundred dollars (\$3,500,000)." The omission of "thousand" appears to be a typographical error.

Amendments. The 2005 amendment by No. 1997, in (b)(1)(A), substituted "forty cents (40¢)" for "fifty cents (50¢)," "place of primary use" for "billing address," and deleted "or with respect to which the mobile identification number for the commercial mobile radio service connection contains an area code assigned to Arkansas by the North American Numbering Plan Administrator" at the end; rewrote (b)(1)(B)(i); in (b)(1)(B)(ii), deleted "approved by the voters and" preceding "implemented," and substituted "forty

cents (40¢) for “fifty cents (50¢)”; in (b)(1)(C), deleted “and (B)” following “(b)(1)(A),” and inserted “less administrative fees under subdivision (b)(3) of this section”; deleted “approved by the voters and” preceding “implemented” in (b)(1)(E); deleted (b)(2)(B)(ii) and redesignated the remaining subdivisions accordingly; in present (b)(2)(B)(ii), substituted “less than forty-nine percent (49%)” for “more than thirty-eight percent (38%)” and inserted “and remitted” following “collected”; in present (b)(2)(B)(ii), substituted “more than forty-nine percent (49%)” for “less than fifty-eight percent (58%),” inserted “and remitted” following “collected,” deleted “and the commercial mobile radio service providers licensed to do business in Arkansas” following “public safety answering points” and inserted “basic 911 mapping”; in (b)(2)(B)(ii)(c), substituted “Not more than one percent (1%)” for “Up to three percent (3%)”; added (b)(2)(B)(ii)(e); and, in present (b)(2)(B)(iv), deleted “and commercial mobile radio service providers” and substituted “subdivision (b)(1)(A)” for “subdivisions (b)(1)(A) and (B).”

The 2005 amendment by No. 2145 added (a)(2)(B).

The 2007 amendment by No. 582 rewrote the section.

The 2007 amendment by No. 1049 rewrote (a)(2).

The 2009 amendment by No. 1221 substituted “sixty-five cents (65¢)” for “fifty cents (50¢)” in (b)(1)(A)(i), (b)(1)(A)(ii)(b), (b)(1)(B)(i), (b)(1)(B)(ii)(a), (b)(1)(C), and (b)(1)(D); in (c)(2)(B)(i), substituted “eighty-three and five-tenths percent (83.5%)” for “forty-nine percent (49%)” and inserted “readiness costs”; in (c)(2)(B)(ii)(a), substituted “fifteen percent (15%)” for “forty-nine percent (49%)” and inserted the last sentence; inserted “and maintaining” in (c)(2)(B)(ii)(b); substituted “five-tenths percent (0.5%)” for “one percent (1%)” in (c)(2)(B)(iii); in (c)(2)(B)(v)(A), substituted “April 1” for “March 1” and inserted “along with a copy ... counties, cities, or agencies”; inserted (c)(2)(B)(v)(b)(2) and redesignated the existing text of (c)(2)(B)(v)(b) accordingly; and made related changes.

The 2009 amendment by No. 1480 substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” in (a)(2).

U.S. Code. The Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, is codified as 4 U.S.C. § 116 et seq.

Cross References. Optional provision of database to vendors, § 23-17-413.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

12-10-319. Emergency telephone service charges — Reduction, suspension, etc.

(a)(1) If the proceeds generated by an emergency telephone service charge exceed the amount of moneys necessary to fund the 911 telephone system and 911 public safety communications center, including, without limitation, debt service on bonds issued under § 12-10-321, maintenance, operations, depreciation, and obsolescence, the governing authority shall, by ordinance, reduce the service charge rate to an amount necessary for adequate funding.

(2) In lieu of reducing the service charge rate, the governing authority of the political subdivision may suspend such service charge if the revenue generated therefrom exceeds the necessary funding level.

(b)(1) By ordinance, the governing authority of the political subdivision may reestablish or raise to a level not to exceed the original emergency telephone service charge rate, or lift the suspension thereof,

if the amount of moneys generated is less than the amount necessary for adequate funding.

(2) Notwithstanding this section, the political subdivision may, in the ordinance referred to in § 12-10-321 or other ordinance, warrant that, so long as bonds issued pursuant to § 12-10-321 are outstanding, emergency telephone service charges shall be maintained at such levels as may be required by or pursuant to the ordinance authorizing such bonds.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826.

12-10-320. Emergency telephone service charges — Duties, rights, liability, etc., of service supplier.

(a) The duty of the service supplier to collect any service charge shall commence upon the date of its implementation, which date shall be specified in the resolution calling the election.

(b)(1) The service supplier shall have no obligation to take any legal action to enforce the collection of any emergency telephone service charge.

(2) However, the service supplier shall annually provide the governing authority of the political subdivision with a list of the amount uncollected, together with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be nonpayment of such service charge.

(3) The service charge shall be collected at the same time as the tariff rate in accordance with the regular billing practice of the service supplier.

(4) Good faith compliance by the service supplier with this provision shall constitute a complete defense for the service supplier to any legal action or claim which may result from the service supplier's determination of nonpayment and the identification of service users in connection therewith.

(c)(1) The amounts collected by the service supplier attributable to any emergency telephone service charge shall be due quarterly. The amount of service charge collected on one (1) calendar quarter by the service supplier shall be remitted to the political subdivision no later than sixty (60) days after the close of a calendar quarter.

(2) A return, in such form as the governing authority of the political subdivision and the service supplier agree upon, shall be filed with the political subdivision, together with a remittance of the amount of service collected payable to the political subdivision.

(3) The service supplier shall be entitled to retain as an administrative fee an amount equal to one percent (1%) from the gross receipts to be remitted to the political subdivision.

(4) The service supplier shall maintain records of the amount of the service charge collected for a period of at least two (2) years from date of collection.

(5) The governing authority may, at its expense, require an annual audit of the service supplier's books and records with respect to the collection and remittance of the service charge.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826.

12-10-321. 911 centers — Bonds.

(a) The governing authority of the political subdivision shall have power to incur debt and issue bonds for 911 systems and public safety communication center implementation and future major capital items.

(b) The bonds shall be negotiable instruments and shall be solely the obligations of each political subdivision and not the State of Arkansas.

(c) The bonds and income thereof shall be exempt from all taxation in the State of Arkansas.

(d) The bonds shall not be general obligations but shall be special obligations payable from all or a specified portion of the income revenues and receipts of the political subdivision derived from the emergency telephone service charge. The substance of the preceding sentence shall be printed on the face of each bond.

(e)(1) The bonds shall be authorized and issued by ordinance of the governing authority of each political subdivision.

(2) The bonds shall be:

(A) Of such series as the ordinance provides;

(B) Mature on such date or dates not exceeding thirty (30) years from date of the bonds as the ordinance provides;

(C) Bear interest at such rate or rates as the ordinance provides;

(D) Be in such denominations as the ordinance provides;

(E) Be in such form either coupon or fully registered without coupon as the ordinance provides;

(F) Carry such registration and exchangeability privileges as the ordinance provides;

(G) Be payable in such medium of payment and at such place or places within or without the state as the ordinance provides;

(H) Be subject to such terms of redemption as the ordinance provides;

(I) Be sold at public or private sale as the ordinance provides; and

(J) Be entitled to such priorities on the income, revenues, and receipts generated by the emergency telephone service charge as the ordinance provides.

(f) The ordinance may provide for the execution of a trust indenture or other agreement with a bank or trust company located within or without the state to set forth the undertakings of the political subdivision.

(g) The ordinance or such agreement may include provisions for the custody and investment of the proceeds of the bonds and for the deposits and handling of income, revenues, and receipts for the purpose of payment and security of the bonds and for other purposes.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826.

12-10-322. 911 centers — Federal, state, local, etc., funds.

In order to provide additional funding for the 911 public safety communications center, the political subdivision may receive and appropriate any federal, state, county, or municipal funds, as well as funds from private sources, and may expend such funds for the purposes of this subchapter.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826.

12-10-323. Authorized expenditures of revenues.

(a)(1) Any revenue generated pursuant to §§ 12-10-318 — 12-10-321 may be expended only in direct connection with the provision of 911 services and only for the following purposes:

(A) The engineering, installation, and recurring costs necessary to implement, operate, and maintain a 911 telephone system;

(B) The costs necessary for forwarding and transfer capabilities of calls from the 911 public safety communication center to dispatch centers or to other 911 public safety communication centers;

(C) Engineering, construction, lease, or purchase costs to lease, purchase, build, remodel, or refurbish a 911 public safety communication center and for necessary emergency and uninterruptable power supplies for the center;

(D) Personnel costs, including salary and benefits, of each position charged with supervision and operation of the 911 public safety communication center and system;

(E) Purchase, lease, operation, and maintenance of consoles, telephone and communications equipment owned or operated by the political subdivisions and physically located within and for the use of the 911 public safety communication center, and radio or microwave towers and equipment with lines which terminate in the 911 public safety communication center;

(F) Purchase, lease, operation, and maintenance of computers, data processing equipment, associated equipment, and leased audio or data lines assigned to and operated by the 911 public safety communication center for the purposes of coordinating, forwarding of calls, dispatch, or recordkeeping of public safety and private safety agencies for which the 911 public safety communication center is the public safety answering point and to provide information assistance to those agencies; and

(G) Supplies, equipment, public safety answering point personnel training, vehicles, and vehicle maintenance, if such items are solely and directly related to and incurred by the political subdivision in mapping, addressing, and readdressing a 911 system.

(2) Nothing in this subsection shall be interpreted or construed as authorizing a political subdivision to purchase emergency response

vehicles, law enforcement vehicles, or other political subdivision vehicles from such funds.

(b) Expenditure of revenue generated by §§ 12-10-318 — 12-10-321 for purposes not identified in this section is prohibited.

(c) Appropriations of funds from any source other than §§ 12-10-318 — 12-10-321 may be expended for any purpose and may supplement the authorized expenditures of this section and may fund other activities of the 911 public safety communication center not associated with the provision of emergency services.

History. Acts 1985, No. 683, § 6; A.S.A. 1991, No. 1196, § 5; 1997, No. 952, § 2; 1947, § 73-1827; Acts 1989, No. 524, § 1; 2003, No. 176, § 1.

12-10-324. Response to call — Entrance procedures.

When responding to a 911 emergency call received at a public safety answering point, public safety officers of public safety agencies may use reasonable and necessary means to enter any dwelling, dwelling unit, or other structure without the express permission of the owner when:

(1) The dwelling or structure is believed to be the geographical location of the telephone used to place the 911 emergency call as determined by an automatic locator or number identifier; and

(2) Only after reasonable efforts have been made to arouse and alert any inhabitants or occupants of their presence and the officers have reason to believe that circumstances exist which pose a clear threat to the health of any person or they have reason to believe there may be a person in need of emergency medical attention present in the dwelling or structure who is unable to respond to their efforts.

History. Acts 1993, No. 1032, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 12-10-301 — 12-10-323

may not apply to this section which was enacted subsequently.

CHAPTER 11

PREVENTION OF PUBLIC OFFENSES

SECTION.

- 12-11-101. Preventive measures.
- 12-11-102. Unlawful assembly of twenty or more persons.
- 12-11-103. Unlawful assembly of three or more persons.
- 12-11-104. Resistance to authority.
- 12-11-105. [Repealed.]

SECTION.

- 12-11-106. Discharge or further requirement of security.
- 12-11-107. Security by recognizance.
- 12-11-108. Security after commitment.
- 12-11-109. Breaches of bond.
- 12-11-110. Drunken, insane, and disorderly persons.

Cross References. State police, criminal investigation and prevention of crime, § 12-8-101 et seq.

12-11-101. Preventive measures.

The commission of public offenses may be prevented by proceedings:

- (1) For suppressing riots and resistance to lawful authority;
- (2) For requiring security to keep the peace or for good behavior; and
- (3) For arresting and confining insane, drunken, and disorderly persons.

History. Crim. Code, § 9; C. & M. Dig., § 3323; Pope's Dig., § 4171; A.S.A. 1947, § 42-201.

CASE NOTES**Riot.**

City chief of police had right to arrest plaintiffs under this section where they were in fact members of an unlawful or

riotous assembly. *Pritchard v. Downie*, 216 F. Supp. 621 (E.D. Ark. 1963), *aff'd*, 326 F.2d 323 (8th Cir. 1964).

12-11-102. Unlawful assembly of twenty or more persons.

(a) When persons to the number of twenty (20) or more are unlawfully or riotously assembled in a city or town, the county sheriff of the county, his or her deputies, and the other peace officers and magistrates of the city or town, together with the mayor or other chief officer of the city or town, must go among the persons assembled or as near them as possible and in the name of the state command them to disperse.

(b) If the persons assembled do not immediately disperse, the magistrates and officers must arrest them or cause them to be arrested so that they may be punished according to law, and the magistrates and officers may command to their aid all persons present or in the county.

(c) If the persons commanded to aid the magistrates and officers neglect to do so without just cause, they shall be treated as a part of the rioters and punished accordingly.

(d) If a magistrate or officer named in this section, having notice of an unlawful or riotous assembly, neglects to proceed to the place of assembly, or as near as he or she can with safety, and exercise the authority invested in him or her to suppress the assembly and arrest the offenders, then the magistrate or officer is guilty of a misdemeanor.

History. Crim. Code, §§ 366-369; C. & M. Dig., §§ 3328-3331; Pope's Dig., §§ 4176-4179; A.S.A. 1947, §§ 42-206 — 42-209.

Publisher's Notes. This section, or

portions thereof, may have been impliedly repealed by § 5-71-206.

Cross References. Fines, § 5-4-201.
Imprisonment, § 5-4-401.
Misdemeanors, § 5-1-107.

CASE NOTES

ANALYSIS

Failure to Disperse.
Neglect of Duty.
Right to Arrest.

Failure to Disperse.

Plaintiffs were not falsely arrested or imprisoned where police officers were following their duty to arrest them as members of an unlawful and riotous assembly upon their failure to disperse upon command. *Pritchard v. Downie*, 216 F. Supp. 621 (E.D. Ark. 1963), *aff'd*, 326 F.2d 323 (8th Cir. 1964).

Neglect of Duty.

Jury instruction that if peace officers "neglected, failed or refused" to arrest

members of lynch mob the jury should find the officers guilty of neglect of duty was not open to a general objection on the ground that it made the defendants liable whether they were able to make the arrests or not. *Pennewell v. State*, 105 Ark. 32, 150 S.W. 114 (1912).

Right to Arrest.

City chief of police was peace officer with right to arrest plaintiffs under this section where they were in fact members of an unlawful or riotous assembly. *Pritchard v. Downie*, 216 F. Supp. 621 (E.D. Ark. 1963), *aff'd*, 326 F.2d 323 (8th Cir. 1964).

Cited: *Chapman v. State*, 257 Ark. 415, 516 S.W.2d 598 (1974).

12-11-103. Unlawful assembly of three or more persons.

(a) When three (3) or more persons shall be riotously, unlawfully, or tumultuously assembled, it shall be the duty of any judge, justice of the peace, county sheriff, county coroner, or constable who shall have knowledge or be informed thereof to make a proclamation among the persons so assembled, or as near them as he or she can safely come, charging and commanding them immediately to disperse themselves and peaceably to depart to their habitations or lawful business.

(b) If upon the proclamation being made, the persons so assembled shall not immediately disperse and depart as commanded or if they shall resist the officer or prevent the making of the proclamation, then the officer shall command those present, and the power of the county if necessary, and shall disperse the unlawful assembly, arrest the offenders, and take them before some judicial officer, to be dealt with according to law.

History. Rev. Stat., ch. 44, div. 8, art. 1, §§ 2, 3; C. & M. Dig., §§ 3324, 3325; Pope's Dig., §§ 4172, 4173; A.S.A. 1947, §§ 42-211, 42-212.

Publisher's Notes. This section, or portions thereof, may have been impliedly repealed by § 5-71-206.

CASE NOTES

Cited: *Pritchard v. Downie*, 216 F. Supp. 621 (E.D. Ark. 1963); *Chapman v. State*, 257 Ark. 415, 516 S.W.2d 598 (1974).

12-11-104. Resistance to authority.

(a) When a county sheriff or other public officer authorized to execute process finds or has reason to believe that resistance will be made to the

execution of the process, the county sheriff or public officer may command as many inhabitants of his or her county as he or she may think proper, and any military companies in his or her county, armed and equipped, to assist him or her in overcoming the resistance and in arresting and confining the resisters and their aiders and abettors to be punished according to law.

(b) The county sheriff or public officer shall report to the court from which the process issued the names of the resisters and their aiders and abettors so that they may be punished for contempt.

(c) Every person commanded by a county sheriff or public officer to assist him or her in the execution of process, who without lawful cause refuses or neglects to obey the command, is guilty of a Class A misdemeanor and contempt of the court from which the process issued.

History. Crim. Code, §§ 362-364; C. & M. Dig., §§ 3333-3335; Pope's Dig., §§ 4181-4183; A.S.A. 1947, §§ 42-202 — 42-204; Acts 2005, No. 1994, § 198.

Amendments. The 2005 amendment deleted "male" preceding "inhabitants" in

(a); and, in (c), inserted "Class A" preceding "misdemeanor."

Cross References. Deputizing citizens by state police, § 12-8-110.

Procedures of arrest, § 16-81-107.

Refusing to assist officer, § 5-54-109.

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Officer's Discretion.

Passive Resistance.

Constitutionality.

This section was neither void on its face nor unconstitutional as applied to defendants convicted for refusing to assist police officer in effecting a misdemeanor arrest pursuant to a warrant. *Williams v. State*, 253 Ark. 973, 490 S.W.2d 117 (1973).

In General.

This section is an extension of the common law concept of posse comitatus, if not merely a codification thereof. *Williams v. State*, 253 Ark. 973, 490 S.W.2d 117 (1973).

Officer's Discretion.

The standards for action for a public officer in commanding assistance in overcoming resistance to the execution of process is adequately prescribed in this section; the exercise of discretion by the officer is in keeping with the history of posse comitatus and is necessary for its effective and appropriate use, although discretion cannot be exercised arbitrarily. *Williams v. State*, 253 Ark. 973, 490 S.W.2d 117 (1973).

Passive Resistance.

For the purposes of this section, resistance need not be by active means. *Williams v. State*, 253 Ark. 973, 490 S.W.2d 117 (1973).

Cited: *State ex rel. Att'y Gen. v. Moore*, 76 Ark. 197, 88 S.W. 881 (1905); *Brock v. Eubanks*, 102 Ark. App. 165, 288 S.W.3d 272 (2008).

12-11-105. [Repealed.]

Publisher's Notes. This section, concerning security to keep the peace for good behavior, was repealed by Acts 1991, No. 266, § 13. The section was derived from

Crim. Code, §§ 371-375; C. & M. Dig., §§ 3337-3344; Pope's Dig., §§ 4185-4192; A.S.A. 1947, §§ 42-215 — 42-219.

12-11-106. Discharge or further requirement of security.

(a)(1) Upon the defendant appearing, the court shall examine the case, and either discharge the defendant or require security to keep the peace or for his or her good behavior for a period not exceeding one (1) year. In default of giving security, the court may commit the defendant to jail for a period to be fixed by the court, not exceeding three (3) months, unless he or she shall in the meantime give security.

(2) Where a defendant is committed to jail for failure to give security as provided in subdivision (a)(1) of this section, the cause of commitment and the sum in which he or she is required to give security shall be stated in the written order of commitment, which shall be delivered to the jailer.

(b) Where the proceedings are taken upon the complaint of the person threatened and the complainant fails to appear before the court or magistrate, the defendant shall be discharged.

(c) Unless the court or magistrate is satisfied that there are reasonable grounds for believing that the defendant will commit an offense against the person or property of another, commit violence endangering human life, or an offense amounting to a felony, the defendant shall be discharged.

History. Crim. Code, §§ 376, 378, 379; C. & M. Dig., §§ 3345-3348; Pope's Dig., §§ 4193-4196; A.S.A. 1947, §§ 42-220 — 42-222.

A.C.R.C. Notes. This section may be superseded by the Arkansas Rules of Criminal Procedure.

12-11-107. Security by recognizance.

Where the security required in §§ 12-11-106 — 12-11-109 is given in court, it may be by a recognizance entered into in open court and entered upon the records by the clerk.

History. Crim. Code, § 382; C. & M. Dig., § 3349; Pope's Dig., § 4197; A.S.A. 1947, § 42-223.

A.C.R.C. Notes. This section may be superseded by the Arkansas Rules of Criminal Procedure.

12-11-108. Security after commitment.

Any magistrate or circuit judge may take the security required by §§ 12-11-106 — 12-11-109 of a defendant committed to jail for default of giving such security.

History. Crim. Code, § 377; C. & M. Dig., § 3350; Pope's Dig., § 4198; A.S.A. 1947, § 42-224.

A.C.R.C. Notes. This section may be superseded by the Arkansas Rules of Criminal Procedure.

12-11-109. Breaches of bond.

(a) The following are the breaches of the bond required in §§ 12-11-106 — 12-11-108 and this section:

(1) The failure of the defendant to appear in the circuit court, where the bond requires such appearance, or departing therefrom before he or she is lawfully discharged;

(2) A judicial conviction of the defendant of an offense involving a breach of the peace within the period specified in the bond; and

(3) A judicial conviction of the defendant of a felony within the time specified in the bond, where the bond is for his or her good behavior.

(b) The prosecuting attorney may proceed by action, in the name of the state, against the defendant and his or her security, upon a breach of the bond.

History. Crim. Code, §§ 380, 381; C. & M. Dig., §§ 3351, 3352; Pope's Dig., §§ 4199, 4200; A.S.A. 1947, §§ 42-225, 42-226.

A.C.R.C. Notes. This section may be superseded by the Arkansas Rules of Criminal Procedure.

12-11-110. Drunken, insane, and disorderly persons.

(a) It shall be the duty of all peace officers to arrest any insane or drunken person, whom they may find at large and not in the care of some discreet person, and take him or her before some magistrate of the county, city, or town in which the arrest is made.

(b) It shall also be the duty of all peace officers to arrest any disorderly person, whom they may find creating a disturbance by noise or other disorder, and take him or her before some magistrate of the county, town, or city in which the arrest is made.

(c)(1) If the arrests authorized in subsections (a) and (b) of this section are made during the night, the officer shall keep those arrested in confinement until the next morning.

(2) In the case of an insane or drunken person, the officer may deliver him or her into the custody of some discreet person who will undertake to restrain and take care of him or her.

(3) If the arrests are made in the local jurisdiction of a city court, the person arrested shall be taken before the judge of such court unless he or she is absent.

(d)(1) Upon a drunken person being brought before a magistrate, the magistrate shall have the power to order the person to be confined until he or she becomes sober.

(2) Upon a disorderly person being brought before a magistrate, the magistrate may require of him or her surety for his or her good behavior, and for keeping the peace for a period not exceeding one (1) year. On the failure of the disorderly person to give such security, the magistrate may commit him or her until he or she gives security, but in no event is the confinement to exceed thirty (30) days.

History. Crim. Code, §§ 383-385, 387; C. & M. Dig., §§ 3353-3357; Pope's Dig., §§ 4201-4205; A.S.A. 1947, §§ 42-227 — 42-230.

Publisher's Notes. Section 383 of the Criminal Code of Practice of 1869 is also codified as § 20-47-101.

Cross References. Arrests by railroad conductors, § 23-12-708.

CASE NOTES

Town Ordinance.

A town ordinance declaring it a nuisance for any person to appear or be found on any street, alley, or public square of the

town in a state of intoxication or drunkenness did not conflict with this section. *Dewitt v. La Cotts*, 76 Ark. 250, 88 S.W. 877 (1905).

CHAPTER 12

CRIME REPORTING AND INVESTIGATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
 2. ARKANSAS CRIME INFORMATION CENTER.
 3. STATE CRIME LABORATORY.
 4. SEXUAL ASSAULT — MEDICAL-LEGAL EXAMINATIONS.
 5. CHILD ABUSE REPORTING.
 6. KNIFE AND GUNSHOT WOUND REPORTING.
 7. PSYCHOLOGICAL STRESS TESTS.
 8. MISSING CHILDREN.
 9. SEX OFFENDER REGISTRATION ACT OF 1997.
 10. CRIMINAL HISTORY INFORMATION AND REPORTING STANDARDS.
 11. STATE CONVICTED OFFENDER DNA DATA BASE ACT.
 12. VICTIM NOTIFICATION SYSTEM.
 13. SEX OFFENDERS ASSESSMENT. [REPEALED.]
 14. TASK FORCE ON RACIAL PROFILING.
 15. ARKANSAS STATE CRIMINAL RECORDS ACT.
 16. CRIMINAL HISTORY FOR VOLUNTEERS ACT.
 17. ADULT AND LONG-TERM CARE FACILITY RESIDENT MALTREATMENT ACT.

Cross References. Law enforcement officers, immunity from civil liability, § 23-60-111.

SUBCHAPTER 1 — GENERAL PROVISIONS

- SECTION.

12-12-101. [Repealed.]

12-12-102. Authority to investigate and arrest in contiguous county.

12-12-103. Pawnshop records — Penalty.

12-12-104. Physical evidence in sex offense prosecutions—Retention and disposition.
- SECTION.

12-12-105. Controlled substance laboratory seizure reports.

12-12-106. Investigations of an alleged sex offense.

Cross References. Arrest and custody, § 16-81-102 et seq.

Effective Dates. Acts 1945, No. 231, § 28: Mar. 30, 1945. Emergency clause provided: "It having been ascertained and determined by the General Assembly that on account of the widespread disregard for the traffic laws of the state and the rules and regulations governing the same as a result of the establishment of many large war plants and military posts in the State of Arkansas, together with the enormous increase of traffic caused by the war, which has created conditions at and around such war plants and military posts creating a condition upon the highways of this state which, in order to efficiently operate the Department of Arkansas State Police, make it necessary that the same be departmentalized and organized in such manner that the personnel of said department can be assigned and directed in a more efficient manner and because of the hazards to life and limb as a result of the disregard for the laws making such conditions dangerous to the health, peace, and safety of the people of Arkansas an emergency is hereby declared to exist and this act being necessary for the preserva-

tion of the peace, health, and safety of the citizens of this state and for the traveling public, this act shall take effect and be in full force after its passage and approval."

Acts 2007, No. 262, § 2: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Constitution does not provide for electronic transfer of pawn records, that law enforcement agencies across the state require timely reporting of pawn records, and that this act is immediately necessary to aid pawnbrokers in providing critical information on a daily basis to law enforcement when it comes to property crimes and crimes against people. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-12-101. [Repealed.]

Publisher's Notes. This section, concerning fingerprinting of individuals arrested for criminal offenses, was repealed by Acts 1997, No. 826, § 1. The section was derived from Acts 1991, No. 1015, §§ 1, 2. For present law, see §§ 12-12-1005(c) and 12-12-1006.

Former § 12-12-101, concerning the fingerprinting of individuals arrested for criminal offenses — submission to state bureau, was repealed by Acts 1991, No. 1015, § 5. The former section was derived from Acts 1985, No. 1038, § 1; A.S.A. 1947, § 43-437.

12-12-102. Authority to investigate and arrest in contiguous county.

Upon receiving permission from the proper county sheriff, any law enforcement officer, acting within the official scope of his or her duty, may investigate and arrest any person violating any provision of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-608, in any county contiguous to the county in which the county sheriff or law enforcement officer is employed.

History. Acts 1985, No. 675, § 1; A.S.A. 1947, § 82-2625.2.

Publisher's Notes. Acts 1985, No. 675, § 1, is also codified as § 5-64-705.

12-12-103. Pawnshop records — Penalty.

(a) It shall be the duty of each and every pawnshop and pawnbroker doing business in the State of Arkansas to keep a record showing in detail all property pawned with them.

(b)(1) The records required under subsection (a) of this section shall include:

(A) A detailed record of each and every transaction, including the type of identification displayed by the person from whom the property was received;

(B) The name, address, race, sex, height, weight, and date of birth of the person from whom the property was received;

(C) The driver's license number, personal identification number issued under § 27-16-805, or the number from some other form of photographic identification of the person from whom the property was received; and

(D) A description of each item pawned, including, but not limited to, identifying numbers or serial numbers.

(2) The records shall be maintained on the following form:

"Ticket _____	Description _____
Owner _____	D.O.B. _____
Address _____	Race _____
DL#, ID# or SS# _____	Sex _____
Article _____	Ht. _____
Serial # _____	Wt. _____"

(c)(1)(A) One (1) copy of the records required under subsection (a) of this section shall be maintained on file with the pawnshop or pawnbroker for a period of three (3) years.

(B) The Director of the Department of Arkansas State Police, any member of the Department of Arkansas State Police, any county sheriff or deputy of the county, or any police officer of the municipality in which the pawnshop or pawnbroker is located shall have access to all such records at any reasonable time.

(2) The director, the county sheriff, or the chief of police in any county or municipality in which the pawnshop is located may require a report of such transactions for such periods of time as he or she shall deem necessary for the efficient enforcement of the criminal laws or to aid in criminal investigations.

(d)(1) The failure on the part of any pawnbroker, owner, or operator of a pawnshop to comply with a provision of this section shall be a violation.

(2) Upon conviction the offender shall be punished by a fine of not more than one thousand dollars (\$1,000).

(3) Each day a pawnbroker, owner, or operator fails to comply with a provision of this section shall constitute a separate offense and shall be punished accordingly.

(e)(1) Any city or county may require by ordinance that pawnshops and pawnbrokers:

(A) Submit the records required by this section in a designated electronic format; and

(B) Daily upload data to a centralized secure tracking system to be chosen by the city or county.

(2) The electronic records submitted under this subsection (e) shall be used for the sole purpose of investigating crimes involving property.

(3) Pawnshops, pawnbrokers, and pawn customers shall not be required to incur any costs or increased fees as a result of the city or county collecting and processing records required by this section electronically.

History. Acts 1945, No. 231, § 18; 1975, No. 880, § 1; 1985, No. 544, § 1; A.S.A. 1947, § 42-418; Acts 1991, No. 471, § 1; 1995, No. 965, § 1; 2005, No. 1994, § 75; 2007, No. 262, § 1.

Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in (d)(1).

The 2007 amendment added (e).

RESEARCH REFERENCES

Ark. L. Rev. Nickles and Adams, Pawnbrokers, Police, and Property Rights — A

Proposed Constitutional Balance, 47 Ark. L. Rev. 793.

CASE NOTES

Cited: Landers v. Jameson, 355 Ark. 163, 132 S.W.3d 741 (2003).

12-12-104. Physical evidence in sex offense prosecutions—Retention and disposition.

(a) In a prosecution for a sex offense or a violent offense, the law enforcement agency shall preserve, subject to a continuous chain of custody, any physical evidence secured in relation to a trial and sufficient official documentation to locate that evidence.

(b)(1) After a trial resulting in conviction, the evidence shall be impounded and securely retained by a law enforcement agency.

(2) Retention shall be the greater of:

(A) Permanent following any conviction for a violent offense;

(B) For twenty-five (25) years following any conviction for a sex offense; and

(C) For seven (7) years following any conviction for any other felony for which the defendant’s genetic profile may be taken by a law enforcement agency and submitted for comparison to the State DNA Data Base for unsolved offenses.

(c) After a conviction is entered, the prosecuting attorney or law enforcement agency having custody of the evidence may petition the court with notice to the defendant for entry of an order allowing disposition of the evidence if, after a hearing and a reasonable period of

time in which to respond, the court determines by a preponderance of the evidence that:

(1) The evidence has no significant value for forensic analysis and must be returned to its rightful owner; or

(2) The evidence has no significant value for forensic analysis and is of a size, bulk, or physical character not usually retained by the law enforcement agency and cannot practicably be retained by the agency.

(d) The court may order the disposition of the evidence if the defendant is allowed the opportunity to take reasonable measures to remove or preserve portions of the evidence in question for future testing.

(e)(1) It is unlawful for any person to purposely fail to comply with the provisions of this section.

(2) A person who violates this section is guilty of a Class A misdemeanor.

(f) As used in this section:

(1) "Law enforcement agency" means any police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal laws, traffic laws, or highway laws of this state;

(2) "Sex offense" means a sex offense as defined in former § 12-12-1103(10); and

(3) "Violent offense" means a violent offense as defined in § 12-12-1103(11) [repealed].

History. Acts 2001, No. 1780, § 11.

A.C.R.C. Notes. Acts 2001, No. 1780, § 1, provided: "The General Assembly finds that the mission of the criminal justice system is to punish the guilty and to exonerate the innocent. The General Assembly further finds that Arkansas laws and procedures should be changed in order to accommodate the advent of new technologies enhancing the ability to analyze scientific evidence."

Former § 12-12-1103(10), referred to in subdivision (f)(2), defined "sex offense" and was enacted by Acts 1997, No. 737,

§ 3. Acts 2003, No. 1470, § 2, repealed former § 12-12-1103(10) and replaced it with a definition of "repeat offense".

Section 12-12-1103(11), referred to in subdivision (f)(3), was enacted by Acts 1997, No. 737, § 3. Acts 2003, No. 1470, § 2, repealed § 12-12-1103(11).

Cross References. Appeals — New scientific evidence, § 16-112-201 et seq.

Fines, § 5-4-201.

Imprisonment, § 5-4-401.

Petition, § 16-112-103.

Statute of limitations, § 5-1-109.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Criminal Law, 24 U. Ark. Little Rock L. Rev. 429.

12-12-105. Controlled substance laboratory seizure reports.

(a) Each state and local law enforcement agency shall electronically file a report on the form provided and required by the El Paso Intelligence Center of the United States Drug Enforcement Administration with the Arkansas Crime Information Center within ten (10) days of the agency's seizure of:

(1) Drug paraphernalia or drug precursors that could be utilized in the manufacture of a controlled substance; or

(2) Any laboratory reasonably believed to:

(A) Have been utilized in the illegal manufacture of a controlled substance;

(B) Be currently utilized in the illegal manufacture of a controlled substance; or

(C) Be intended for utilization in the illegal manufacture of a controlled substance.

(b) The report described in subsection (a) of this section shall be on the form provided and required by the El Paso Intelligence Center of the United States Drug Enforcement Administration and shall contain any additional information required by the Arkansas Drug Director.

(c)(1) The Arkansas Crime Information Center shall forward the report described in subsection (a) of this section to the El Paso Intelligence Center of the United States Drug Enforcement Administration and other law enforcement or criminal justice agencies designated by the Arkansas Drug Director.

(2) The Arkansas Drug Director shall promulgate rules regarding the distribution of the reports and statistics generated in accordance with the requirements of this section.

(d)(1) The Executive Director of the State Crime Laboratory shall catalogue the number of controlled substance laboratories reported to the State Crime Laboratory through evidence submission.

(2) For each reported controlled substance laboratory, the Executive Director of the State Crime Laboratory shall record the:

(A) Judicial district where the laboratory was located;

(B) Date of seizure of the laboratory; and

(C) Name of the seizing law enforcement agency.

(e)(1) On March 31, June 30, September 30, and December 31 of each year after August 12, 2005, the Arkansas Drug Director shall compare the number of reports made to him or her under subsection (a) of this section with the number of reports made to the State Crime Laboratory under subsection (d) of this section.

(2) Any discrepancy in the number of reports described in subdivision (e)(1) of this section shall be recorded by the Arkansas Drug Director.

(3) The Arkansas Drug Director shall request completion of a reporting form by any law enforcement agency in the state that has failed to comply with a requirement of subsection (a) of this section.

(f) The failure of any law enforcement agency to comply with a requirement of this section may be considered by a state board or agency as a factor for the withholding of awards or grant moneys or other funds that relate to controlled substance enforcement.

History. Acts 2005, No. 1873, § 1.

read "... after the effective date of this section ...".

A.C.R.C. Notes. As enacted by Acts 2005, No. 1873, § 1, subdivision (e)(1)

12-12-106. Investigations of an alleged sex offense.

- (a) A law enforcement officer, prosecuting attorney, or other government official shall not ask or require an adult victim of an alleged sex offense, a youth victim of an alleged sex offense, or a child victim of an alleged sex offense to submit to a polygraph examination or an examination of any other truth-telling device as a condition of proceeding with the investigation of an alleged sex offense.
- (b) The refusal of a victim of an alleged sex offense to submit to an examination described in subsection (a) of this section shall not prevent the investigation, charging, or prosecution of the alleged sex offense.

History. Acts 2007, No. 676, § 3.

SUBCHAPTER 2 — ARKANSAS CRIME INFORMATION CENTER

SECTION.	SECTION.
12-12-201. Creation — Director.	12-12-209. Duty to furnish data.
12-12-202. Supervisory board — Members — Meetings.	12-12-210. Special information services agents.
12-12-203. Supervisory board — Duties.	12-12-211. Access to records.
12-12-204. Arkansas Crime Prevention Office Act.	12-12-212. Release or disclosure to unauthorized person — Penalty.
12-12-205. Missing Persons Information Clearinghouse.	12-12-213. Invasion of privacy prohibited.
12-12-206. Data processing — Supervision.	12-12-214. Fees from localities — Disposition.
12-12-207. Maintenance and operation of information system.	12-12-215. Registry of orders of protection.
12-12-208. Coordination with national crime control information systems.	12-12-216. Carry forward.
	12-12-217. Annual report.

Preambles. Acts 1971, No. 286 contained a preamble which read: “Whereas, proper law enforcement, improved public safety and effective administration of justice requires complete and timely information on crime, highway safety problems and the Criminal Justice System; and
“Whereas, advances in computer and related communications technology now make it both practical and feasible to obtain such data more rapidly and in greater detail than heretofore possible; and
“Whereas, State resources and Federal funds are now at work in the development of a comprehensive computer-based Criminal Justice and Highway Safety Information System for Arkansas; and
“Whereas, installation of such a system will help apprehend criminals, improve the efficiency of criminal justice agencies,

and ultimately help reduce crime; and
“Whereas, statistics are needed to aid in determining the cause and amount of crime in this State, to form a basis for the study of crime, police methods, court procedure, highway safety problems, penal problems and to plan effective programs for combating crime; and
“Whereas, a Supervisory Board working closely with criminal justice agencies is needed to administer and control the use and operation of the system; and
“Whereas, it is the intent of the Legislature to safeguard all persons from the misuse of criminal records by any person or agency and to provide adequate safeguards and limitations on the use of all criminal history records....”
Effective Dates. Acts 1971, No. 286, § 11: July 1, 1971.

Acts 1975, No. 742, § 17: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly, that the maintenance of an adequate Criminal Justice and Highway Safety Information System is essential to law enforcement in this state, and that the establishment of said program in the Department of Public Safety is necessary to enable proper coordination and maximum use of the services of the program, and that the immediate passage of this act is necessary in order that this transfer may be made and be effective by July 1, 1975, in the event of an extension of this regular session of the General Assembly. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1975."

Acts 1979, No. 124, § 3: July 1, 1979.

Acts 1981, No. 612, § 3: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the authority of the Arkansas Crime Information Center to collect and maintain this information is essential for law enforcement in this state, and is necessary for the most efficient use of the computerized system of the Arkansas Crime Information Center. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 214, § 6: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in

full force and effect from and after July 1, 1983."

Acts 1983, No. 282, § 3: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the authority of the Arkansas Crime Information Center to collect and maintain this information is essential for law enforcement and other criminal justice agencies in this state, and is necessary for the most efficient use of the computerized system of the Arkansas Crime Information Center. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 37 and 38, § 7: Aug. 25, 1994. Emergency clause provided: "It is hereby found and determined by the General Assembly that serious criminal offenses committed by juveniles have increased to an alarming level and that it will help to deal with these serious juvenile crimes by authorizing the Arkansas Crime Information Center to accumulate juvenile arrest information for those allegations and adjudications of dependency for which the Arkansas Juvenile Code authorizes fingerprints to be taken and maintained, and it will assist in juvenile crime prevention to allow the dissemination of conviction information to nongovernmental entities authorized by federal law; that this act so provides; and this act should go into effect immediately in order to provide additional tools for dealing with juvenile crime as soon as possible. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 995, § 8: Oct. 1, 1995.

Acts 1997, No. 243, § 5: Feb. 24, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that, as future officers of the court, it is necessary to assure applicants for admission to the bar of Arkansas are free of criminal records, and that giving the Arkansas State Board of Law Examiners access to the records of the Arkansas Crime Information Center provides another tool with which to verify information received on applications.

Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 911, § 16: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after July 1, 1997."

Acts 1997, No. 1354, § 51: Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act affects the method of selection of alternate members of the Legislative Council and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1109, § 5: Apr. 5, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that due to critical changes being made by the Federal Bureau of Investigation in the National Crime Information System, and because those changes will have a major impact on law enforcement agencies in Arkansas, and to prepare for those changes, the Arkansas Crime Information Center is required to implement new equipment and systems by July 1, 1999. The Arkansas Crime Information Center must immediately revise its reimbursement procedures in order to finance the required changes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 998, § 4: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the lack of

compliance with the motor vehicle liability insurance law is epidemic in this state; that the owners of motor vehicles that have not complied with mandatory insurance requirements increase the potential financial catastrophe to others involved in accidents with them; that this act is designed and intended to provide enforcement provisions and to ensure increased compliance with the motor vehicle liability insurance law of this state; and that the enactment of new and enhanced penalties and requirements will increase compliance with the motor vehicle liability insurance law. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2003, No. 1031, § 7: Apr. 2, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the 'Task Force to Study the Disparity in Sentencing for Persons Convicted of Non-violent Crimes' has found that it appears that some Arkansas citizens do not receive equitable sentences under the law; that it is necessary to compile statistical sentencing information in order to determine if disparities exist; and that this act is immediately necessary to allow the compil-

ing of the needed statistical information in the first quarter of 2003. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 463, § 6: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that federal law prohibits the sale of firearms to persons who have been committed to a mental institution; that it is the intent of this act to require the submission of information to create a confidential database that may only be used for firearm sales or transactions; and that this act is necessary because possession of a firearm by a person that is suicidal, homicidal, or gravely disabled poses an critical threat of harm to the citizens of this state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

12-12-201. Creation — Director.

(a) There is created the Arkansas Crime Information Center, under the supervision of the Supervisory Board for the Arkansas Crime Information Center established by this subchapter.

(b) This center shall consist of a director and such other staff under the general supervision of the director as may be necessary to administer the services of this subchapter, subject to the approval of funds authorized by the General Assembly.

(c) The board shall name the director of the center.

History. Acts 1971, No. 286, § 1; 1975, No. 742, § 1; A.S.A. 1947, § 5-1101.

Publisher's Notes. The Criminal Justice and Highway Safety Information Center was established under the supervision of a supervisory board and the former Department of Administration by Acts 1971, No. 286, § 1.

Acts 1975, No. 742, §§ 11-14, trans-

ferred the center and its functions, equipment, and personnel to the Department of Public Safety (abolished by Acts 1981, No. 45, § 1). Section 12 further provided that all of the center's personnel would be granted tenure rights on or after July 1, 1975, and that all position, grade, step, and anniversary dates, as established under the state's compensation plan, would

remain as assigned to the position of each employee on or after that date, or as provided by the new compensation plan.

Acts 1979, No. 375, § 1, provided that the Criminal Justice and Highway Safety Information Center would thereafter be known as, and all its functions, powers, and duties would be performed by, the Arkansas Crime Information Center.

Acts 1981, No. 45, § 8, provided, in part, that the Arkansas Crime Information Center and all of its powers, functions, duties, personnel, and funds would

be separated from the Department of Public Safety (abolished by Acts 1981, No. 45, § 1) and established as an independent agency of the state government, to function in the same manner as if it had never been located within the Department of Public Safety (abolished by Acts 1981, No. 45, § 1). It further provided that nothing in the act should be construed to reduce any right which an employee of the Arkansas Crime Information Center had under any civil service or merit system.

12-12-202. Supervisory board — Members — Meetings.

(a) There is created a Supervisory Board for the Arkansas Crime Information Center.

(b) The board shall consist of fourteen (14) members:

(1) The Attorney General or one (1) of his or her assistants;

(2) The Chief Justice of the Supreme Court or his or her designated agent;

(3) A member designated by the Arkansas Prosecuting Attorneys Association;

(4) A member designated by the Arkansas Sheriffs Association;

(5) A member designated by the Arkansas Association of Municipal Judges;

(6) A member designated by the President of the Arkansas Bar Association who is regularly engaged in criminal defense work;

(7) Two (2) citizens of the State of Arkansas, to be appointed by the Governor;

(8) A member designated by the Arkansas Municipal Police Association;

(9) The Director of the Department of Correction or his or her designated agent;

(10) A member designated by the Arkansas Association of Chiefs of Police;

(11) A member designated by the Association of Arkansas Counties;

(12) The Director of the Department of Arkansas State Police or his or her designated agent; and

(13) The Governor or a member of the Governor's staff designated by the Governor.

(c) No member shall continue to serve on the board when the member no longer officially represents the function for which the member was appointed, except the citizens appointed by the Governor, who shall serve for a period of four (4) years.

(d) The board, for cause, may remove any board member and shall notify the Governor of the removal and the reason therefor.

(e)(1) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(2) The board members shall receive no other compensation, expense reimbursement, or in-lieu-of payments except as provided in this subsection.

(f) The board shall meet at such times and places as it shall deem appropriate.

(g) A majority of the board shall constitute a quorum for transacting any business of the board.

History. Acts 1971, No. 286, §§ 3-5; 1995, No. 1214, § 1; 1997, No. 250, § 66; 1975, No. 742, §§ 3-5; 1977, No. 542, § 1; 1997, No. 1354, § 30; 2001, No. 1288, A.S.A. 1947, §§ 5-1103 — 5-1105; Acts §§ 3, 4.

12-12-203. Supervisory board — Duties.

(a) The duties and responsibilities of the Supervisory Board for the Arkansas Crime Information Center are to:

(1) Maintain and operate the Arkansas Crime Information Center;

(2) Provide that the information obtained by this subchapter shall be restricted to the items specified in this subchapter and so administer the center so as not to accumulate any information or distribute any information that is not specifically approved in this subchapter;

(3) Provide for adequate security safeguards to ensure that the data available through this system are used only by properly authorized persons and agencies;

(4) Provide for uniform reporting and tracking systems to report data authorized by this subchapter. Standard forms and procedures for reporting authorized data under this subchapter shall be prescribed by the board;

(5) Establish such regulations and policies as may be necessary for the efficient and effective use and operation of the information center under the limitations imposed by the terms of this subchapter;

(6) Provide for the reporting of authorized information under the limitations of this subchapter to the United States Department of Justice under its national system of crime reporting; and

(7) Provide for research and development activities that will encourage the application of advanced technology, including the development of prototype systems and procedures, the development of plans for the implementing of these prototypes, and the development of technological expertise which can provide assistance in the application of technology in record and communication systems in Arkansas.

(b) The board shall establish its own rules and regulations for performance of the responsibilities charged to the board in this subchapter.

History. Acts 1971, No. 286, §§ 3, 5; 1975, No. 742, §§ 3, 5; A.S.A. 1947, §§ 5-1103, 5-1105.

Cross References. Arkansas State Criminal Records Act, intent of, § 12-12-1502.

Dissemination of criminal history information, § 12-12-1504.

Implementation of Arkansas State Criminal Records Act, § 12-12-1512.

Release of criminal history information, authorization of, § 12-12-1507.

Unrestricted information, records, immunity from civil liability, § 12-12-1506.

12-12-204. Arkansas Crime Prevention Office Act.

(a) There is created an Arkansas Crime Prevention Office to develop and establish a centralized crime prevention agenda that could be coordinated with all Arkansas law enforcement agencies.

(b) The office will be located in the Arkansas Crime Information Center.

(c) This section shall be known as the "Arkansas Crime Prevention Office Act".

History. Acts 1985, No. 402, §§ 1-3;
A.S.A. 1947, §§ 5-1121 — 5-1123.

12-12-205. Missing Persons Information Clearinghouse.

(a) There is created a Missing Persons Information Clearinghouse within the Arkansas Crime Information Center.

(b) The clearinghouse shall be administered by the Director of the Arkansas Crime Information Center.

(c) The clearinghouse shall:

(1) Establish a computerized system to communicate information on:

(A) Persons reported to be missing; and

(B) Unidentified deceased persons;

(2) Interface with the National Crime Information Center for the exchange of information on:

(A) Missing persons; and

(B) Unidentified deceased persons;

(3) Establish educational services and publications deemed appropriate to aid in dealing with missing persons;

(4) Be authorized to issue regulations and procedures for the orderly collection and entry of information on missing persons and unidentified deceased persons, as well as rules governing access to information on missing persons and unidentified deceased persons;

(5) Annually compile and make available statistical information on the number of missing persons and unidentified deceased persons entered into the computerized system of the clearinghouse and, where available, information on the number located; and

(6) Release information upon request to any court in a pending custody proceeding when the court needs information concerning whether a child has been reported as missing.

(d)(1) Upon receiving notice of a missing child, a law enforcement agency shall complete a missing person report and immediately enter identifying and descriptive information about the missing child into the computerized system of the clearinghouse.

(2)(A)(i) Upon receiving notice of a missing adult, a law enforcement agency shall complete a missing person report and immediately enter

identifying and descriptive information about the missing adult into the computerized system of the clearinghouse, provided the entering agency has signed documentation from a family member, friend, or other authoritative source, including a signed report by an investigating official when other documentation is not reasonably attainable, stating the conditions under which the person is declared missing.

(ii) Such documentation will aid in the protection of the individual's right of privacy.

(B) Missing adults shall be entered based on categories established by the Federal Bureau of Investigation and the categories may include disability, endangered, involuntary, or catastrophe victim.

(3) It shall be the duty of the initial investigating law enforcement agency to immediately cancel the computer entry when the missing child or missing adult is located or returned.

(4) No law enforcement agency shall delay an investigation or entry of missing persons information based on an agency rule or policy which specifies an automatic waiting period.

(e) A person shall be deemed guilty of a Class A misdemeanor who knowingly makes to a law enforcement agency:

(1) A false report of a missing person; or

(2) A false statement in any missing person report.

(f) When the unidentified body of a deceased individual is found, the law enforcement agency receiving the report shall immediately enter identifying and descriptive information about the unidentified body into the computerized system of the clearinghouse according to standards established by the center and the Federal Bureau of Investigation.

(g) When an individual is found whose identity is unknown and cannot be readily determined, the law enforcement agency receiving the report shall immediately enter identifying and descriptive information about the individual into the computerized system of the clearinghouse according to standards established by the center and the Federal Bureau of Investigation.

(h) As used in this section:

(1) "Missing adult" means any person:

(A) Who is eighteen (18) years of age or older;

(B) Whose residence is in Arkansas or is believed to be in Arkansas; and

(C) Who has been reported to a law enforcement agency as missing under circumstances indicating that:

(i) The individual has a physical or mental disability as evidenced by written documentation;

(ii) The individual is missing under circumstances indicating that the disappearance was not voluntary;

(iii) The individual is missing under circumstances indicating that the individual's safety may be in danger; or

(iv) The individual is missing as a result of a natural or intentionally caused catastrophe;

(2) "Missing child" means any person:

(A) Who is under eighteen (18) years of age;

(B) Whose residence is in Arkansas or is believed to be in Arkansas;

(C) Whose location is unknown or who has been taken, enticed, or kept from any person entitled by law or a court decree or order to the right of custody; and

(D) Who has been reported as missing to a law enforcement agency; and

(3) "Missing person report" means a report prepared on a form designated by the center for use by law enforcement agencies to record missing persons information.

(i) The Attorney General shall require each law enforcement agency to comply with the mandatory entry provisions found in subdivisions (d)(1) and (2) of this section and in subsections (f) and (g) of this section and may seek writs of mandamus or other appropriate remedies to enforce this section.

(j) Missing person entries and unidentified deceased person entries, regardless of age, shall remain in the computerized system of the clearinghouse indefinitely or until the missing person is located or returns or positive identification is obtained and the investigation is completed and closed.

(k) The clearinghouse may assist in:

(1) Public notification;

(2) Providing informational resources to families of missing persons; and

(3) Constructing and distributing missing person flyers.

History. Acts 1985, No. 764, §§ 1-4; A.S.A. 1947, §§ 5-1124 — 5-1127; Acts 1987, No. 485, § 1; 1987, No. 486, § 1; 2001, No. 80, § 1.

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

12-12-206. Data processing — Supervision.

(a) All data files and computer programs making up the Arkansas Crime Information System, in accordance with this subchapter, shall be under the control and jurisdiction of the Supervisory Board for the Arkansas Crime Information Center.

(b) The Director of the Arkansas Crime Information Center and the board shall make arrangements for the continued use of existing state computer facilities, computer systems and programming personnel, and communications networks whenever feasible and practical.

History. Acts 1971, No. 286, § 6; 1975, No. 742, § 6; A.S.A. 1947, § 5-1106.

12-12-207. Maintenance and operation of information system.

(a) The Arkansas Crime Information Center shall be responsible for providing for the maintenance and operation of the computer-based Arkansas Crime Information System.

(b) The use of the system is restricted to serving the informational needs of governmental criminal justice agencies and others specifically authorized by law through a communications network connecting local, county, state, and federal authorities to a centralized state repository of information.

(c) The Supervisory Board for the Arkansas Crime Information Center shall approve the creation and maintenance of each file in the system, establish the entry criteria and quality control standards for each file, and conduct an annual review of the appropriateness and effectiveness of all files and services provided by the center.

(d)(1) The center shall collect data and compile statistics on the nature and extent of crime problems in Arkansas and compile other data related to planning for and operating criminal justice agencies.

(2) The center shall also periodically publish statistics and report such information to the Governor, the General Assembly, and the general public.

(e) The center shall be authorized to design and administer uniform record systems, uniform crime reporting systems, and other programs to be used by criminal justice agencies to improve the administration of justice in Arkansas.

History. Acts 1971, No. 286, §§ 2, 9; No. 535, § 6; 1993, No. 551, § 6; 1994 1975, No. 742, § 2; 1981, No. 612, § 1; (2nd Ex. Sess.), No. 37, § 1; 1994 (2nd Ex. 1983, No. 282, § 1; A.S.A. 1947, §§ 5- Sess.), No. 38, § 1; 1995, No. 498, § 1. 1102, 5-1102.3, 5-1109, 5-1117; Acts 1993,

12-12-208. Coordination with national crime control information systems.

(a)(1) The Arkansas Crime Information Center shall be the central access and control agency for Arkansas's input, retrieval, and exchange of criminal justice information in the National Crime Information Center or its successor, and the National Law Enforcement Telecommunications System or its successor.

(2) The center shall be responsible for the coordination of all Arkansas user agencies with the National Crime Information Center and the National Law Enforcement Telecommunications System.

(b) The Director of the Arkansas Crime Information Center or his or her designee shall serve as the National Crime Information Center control terminal officer and the National Law Enforcement Telecommunications System representative.

History. Acts 1979, No. 124, §§ 1, 2; A.S.A. 1947, §§ 5-1102.1, 5-1102.2.

12-12-209. Duty to furnish data.

(a)(1) It shall be the duty of all county sheriffs, chiefs of police, city marshals, correction officials, prosecuting attorneys, court clerks, and other state, county, and local officials and agencies so directed to furnish the Arkansas Crime Information Center all data required by this subchapter.

(2) Upon filing of an order under § 5-2-310(b) or an order of commitment entered pursuant to § 5-2-314(b), § 20-47-214, or § 20-47-215 with a circuit clerk or a probate clerk, the circuit clerk or probate clerk shall submit a copy of the order of commitment to the center.

(b) The data shall be furnished to the center in a manner prescribed by the Supervisory Board for the Arkansas Crime Information Center.

(c) A county sheriff, chief of police, city marshal, correction official, prosecuting attorney, court clerk, or other state, county, or local official who knowingly fails to comply with this subchapter or any rule issued by the board carrying out this subchapter upon conviction is guilty of a violation and shall be punished by a fine not exceeding five hundred dollars (\$500).

History. Acts 1971, No. 286, § 7; 1975, No. 742, §§ 7, 8; A.S.A. 1947, §§ 5-1107, 5-1111; 2007, No. 463, § 3; 2009, No. 165, § 2.

Amendments. The 2007 amendment added (a)(2).

The 2009 amendment, in (c), substituted “knowingly fails” for “shall willfully

fail,” substituted “rule” for “regulation,” substituted “upon conviction is” for “shall be found,” substituted “violation and” for “misdemeanor and upon conviction,” and made minor stylistic changes.

12-12-210. Special information services agents.

(a) To ensure the accuracy, timeliness, and completeness of all records and information as prescribed by this subchapter, the Director of the Arkansas Crime Information Center shall appoint special information services agents.

(b) After proper and sufficient security clearances and training, the agents shall be commissioned to do monitoring and auditing of all records and information as defined by this subchapter and such other duties as may be prescribed by the Supervisory Board for the Arkansas Crime Information Center.

History. Acts 1975, No. 742, § 10; A.S.A. 1947, § 5-1112.

12-12-211. Access to records.

(a)(1) The Arkansas Crime Information Center shall make criminal history records on persons available in accordance with §§ 12-12-1008 — 12-12-1011.

(2) Release of other noncriminal history records shall be in accor-

dance with policies and regulations established by the Supervisory Board for the Arkansas Crime Information Center.

(b)(1) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall be considered a criminal justice agency solely for the purpose of securing information from the center regarding the address or whereabouts of any deserting parent from whom the office is charged with collecting child support.

(2) Any information received by the Crime Victims Reparations Board through the office of the Attorney General obtained from the center pursuant to § 16-90-712 shall not be available for examination except by the affected claimant or his or her duly authorized representative.

(3)(A) It shall be unlawful for any person to disclose information obtained under this subsection except:

(i) For the purpose of performing the duties of the:

(a) Office; or

(b) Crime Victims Reparations Board; or

(ii) Upon court order.

(B) Upon conviction, any person violating subdivision (b)(3)(A) of this section shall be guilty of a Class A misdemeanor.

(c)(1) Except as provided in subdivision (c)(2) of this section, an elected law enforcement officer of a political subdivision of this state shall not be allowed access to information from the center unless either the elected law enforcement officer or a law enforcement officer within his or her department has successfully completed the preparatory program of police training required by the Arkansas Commission on Law Enforcement Standards and Training for certification of law enforcement officers.

(2) A constable shall have access to information from the center if the commission certifies that the constable has completed the course required by § 14-14-1314.

(d)(1) The State Board of Law Examiners shall be deemed to be a regulatory agency having specific statutory access to the records of the center as provided by subsection (a) of this section.

(2) In that capacity, the State Board of Law Examiners shall require each applicant for admission to the Bar of Arkansas to be fingerprinted.

(3) The center is authorized to accept fingerprints or other information provided to it by the State Board of Law Examiners and is further authorized to release to the State Board of Law Examiners any requested information, including state, multistate, and Federal Bureau of Investigation criminal history records, as they may relate to applicants for admission to the bar.

(e) The center shall provide access to the insurance verification database that contains the information provided to the Department of Finance and Administration or to a vendor designated by the department under § 27-22-107 to law enforcement officers during the course of traffic stops.

History. Acts 1971, No. 286, § 2; 1975, No. 742, § 2; 1981, No. 902, §§ 1, 2; A.S.A. 1947, §§ 5-1102, 5-1118, 5-1119; Acts 1993, No. 605, § 1; 1995, No. 1184, § 29; 1997, No. 243, § 1; 1997, No. 826, § 2; 1999, No. 1224, § 1; 2003, No. 998, § 3; 2007, No. 841, § 1; 2009, No. 476, § 1.

Amendments. The 2007 amendment substituted “Board for” for “Board of” in (a)(2); and in (c), added “Except as provided in subdivision (c)(2) of this section”

in present (c)(1), added (c)(2), and made related changes.

The 2009 amendment inserted “or to a vendor designated by the Department of Finance and Administration” in (e).

Cross References. Constable training requirements and uniform requirements, § 14-14-1314.

Fines, § 5-4-201.

Imprisonment, § 5-4-401.

Training for constables, § 12-9-115.

12-12-212. Release or disclosure to unauthorized person — Penalty.

Every person who shall release or disclose any information authorized to be maintained and collected under this subchapter to another person known to lack authority to receive such information and any person who willfully obtains that information for purposes not specified by this subchapter shall be deemed guilty of a Class D felony.

History. Acts 1971, No. 286, § 10; 1975, No. 742, § 9; A.S.A. 1947, § 5-1110; Acts 1997, No. 826, § 3.

Cross References. Fines, § 5-4-201.

Imprisonment, § 5-4-401.

12-12-213. Invasion of privacy prohibited.

Nothing in this subchapter shall be construed to give authority to any person, agency, corporation, or other legal entity to invade the privacy of any citizen as defined by the General Assembly or the courts other than to the extent provided in this subchapter.

History. Acts 1971, No. 286, § 8; A.S.A. 1947, § 5-1108.

12-12-214. Fees from localities — Disposition.

(a) The Arkansas Crime Information Center is authorized to charge fees to other governmental units in order to reimburse the center for expenditures made on behalf of the other governmental units.

(b)(1)(A) The fees shall be categorized as either service fees or system enhancement fees.

(B) However, specified portions of a single fee may be divided between such categories.

(2)(A) The service fees are to be deposited into the Crime Information System Fund in the State Treasury as a refund to expenditures.

(B)(i) System enhancement fees shall be restricted in their use and dedicated solely to financing the acquisition, installation, enhancement, and maintenance of equipment required for the center’s operation, including any additions, extensions, and improvements thereto.

(ii) The center may pledge and use system enhancement fees for the repayment of obligations of the center to the Arkansas Development Finance Authority or other appropriate financing entity.

History. Acts 1983, No. 214, § 3; A.S.A. 1947, § 5-1120; Acts 1999, No. 1109, § 1.

Publisher's Notes. Acts 1975, No. 742 provided that all funds in the Criminal Justice and Highway Safety Information

Center Fund, as established by Acts 1973, No. 750, should remain in that fund for the continued use of the Criminal Justice and Highway Safety Information Center after July 9, 1975.

12-12-215. Registry of orders of protection.

(a) In addition to other duties as provided, the Arkansas Crime Information Center shall maintain a registry of all orders of protection and temporary orders of protection issued by a court of this state or registered in this state.

(b)(1) Upon receipt of an authorized order of protection, temporary order of protection, or any modification or cancellation of such orders, a court clerk shall immediately forward a copy to the county sheriff of the county for service.

(2) The county sheriff shall immediately enter or cause to be entered such orders and any subsequent modifications or cancellations into the center system.

(3) If the county sheriff does not have a center terminal and entries are made by another agency that does have a center terminal, that agency shall make such entries immediately upon receipt of information from the county sheriff.

(4) Only orders which are consistent with § 9-15-302(b) may be entered into the center system.

(c) Information contained in the registry shall be determined by the Supervisory Board for the Arkansas Crime Information Center. Orders of protection and temporary orders of protection required to be entered into the center system shall include, at a minimum, the full name and date of birth of the subject of the order for proper identification.

(d) Information contained in the registry shall be deemed confidential and shall be available at all times only to courts, law enforcement, and prosecuting attorneys.

History. Acts 1995, No. 995, § 1.

12-12-216. Carry forward.

(a) At the close of each fiscal year, the Director of the Arkansas Crime Information Center shall certify to the Chief Fiscal Officer of the State the amount, if any, of unexpended moneys and appropriations in the Crime Information System Fund or its successor resulting from the reimbursement to the Arkansas Crime Information Center by municipal, county, state, or federal governments for teleprocessing services.

(b)(1) Any balance of such moneys and appropriations shall be carried forward and made available for the maintenance, operation,

improvement, and other necessary expenditures in providing teleprocessing services to such municipal, county, state, and federal agencies served by the center.

(2) The total amount which is carried forward under the provisions of this section shall be reported in the budget manuals which are presented to the Legislative Council and Joint Budget Committee during the presession budget hearings which are held in the fall of each even-numbered year.

History. Acts 1997, No. 911, § 9.

12-12-217. Annual report.

(a) On July 31 of each year the Arkansas Crime Information Center shall submit an annual report to the Legislative Council and the Commission on Disparity in Sentencing showing the number of persons arrested for each criminal offense classification, comparing the state and each individual reporting agency.

(b) The report shall include a breakdown by race of all persons arrested in each criminal offense classification.

History. Acts 2003, No. 1031, § 2.

A.C.R.C. Notes. The Commission on Disparity in Sentencing, referred to in (a), was to be created by HB 2264 of the 2003 session which did not pass.

Acts 2003, No. 1031, § 1, provided: "Intent. (a) Ethnic minorities appear to be over represented in the population of persons who are involved in the criminal justice system, charged as defendants, convicted, and incarcerated throughout the United States criminal justice systems.

"(b) It is the responsibility of criminal justice agencies and the courts in the

State of Arkansas to ensure that all actions taken are based upon reasons other than the race of the defendant.

"(c) In order to allow the General Assembly to conduct a thorough review of the Arkansas criminal justice process, information on actions taken by criminal justice agencies and the courts must be reported in a timely, uniform, and consistent manner."

As originally enacted by Acts 2003, No. 1031, § 2, subsection (a) began: "Beginning July 31, 2003, and,"

SUBCHAPTER 3 — STATE CRIME LABORATORY

SECTION.

- 12-12-301. Establishment.
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- 12-12-316. Transportation of corpses.
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SECTION.

- 12-12-321. Autopsies — Exhumed bodies.
- 12-12-322. Hazardous duty pay.
- 12-12-323. Crime Lab Equipment Fund.
- 12-12-324. Testing by State Crime Laboratory.
- 12-12-325. [Repealed.]
- 12-12-326. Autopsies — Line-of-duty death.

Effective Dates. Acts 1975, No. 350, § 7: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 1975 is essential to the operations of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1975 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1975."

Acts 1975, No. 736, § 3: Apr. 3, 1975. Emergency clause provided: "It has been found and it is hereby declared by the Seventieth General Assembly that officials of the Arkansas Department of Correction do not have the authority to carry out their responsibilities in regard to death occurring to people under their jurisdiction. Therefore, an emergency is declared to exist and this act, being immediately necessary for the preservation of the public peace, health, and safety and to insure the proper administration of justice shall be in full force and effect upon its passage and approval."

Acts 1979, No. 864, § 24: Apr. 11, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that criminal activity continues to exist in the State of

Arkansas, and the law enforcement agencies and the criminal justice system has a need for medical and scientific assistance from a consolidated State Crime Laboratory. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 984, § 3: became law without Governor's signature, Apr. 8, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Medical Examiner should have the authority to remove suitable pituitary glands during the course of an autopsy and donate the same to the Arkansas Dwarf Association for the extraction of hormones needed by dwarfs; and that this act is immediately necessary to provide such authority. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 216, § 3: Feb. 28, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law places a duty on certain persons to notify the sheriff and State Medical Examiner of the death of another by violence or a death under unusual circumstances; that the imposition of a penalty for failure to make such notice is necessary to insure proper reporting; and that this act is immediately necessary to assure that deaths occurring on or after the passage of this act are properly reported. Therefore, an emergency is hereby

declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 644, § 7: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1985."

Acts 1993, No. 177, § 5: Feb. 19, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that legislation has been proposed for immediate enactment to provide that the State Crime Laboratory shall perform post mortem examinations instead of autopsies; that the present law amended by this act requires whomever performs an autopsy to sign the death certificate; and whereas this law should be changed to post mortem examinations instead of autopsies; and whereas the legislation changing the State Crime Laboratory's duties to make post mortem examinations in lieu of autopsies will go into effect effective as soon as enacted; it is necessary that this act also go into effect as soon as enacted. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 178, § 5: Feb. 19, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Crime Laboratory is

now required to perform autopsies in certain circumstances; that the Crime Laboratory should be required to conduct post-mortem examinations in lieu of autopsies; that changing the requirements will grant necessary relief to the Crime Laboratory from its overwhelming workload; and that this act should go into effect immediately in order to provide that relief as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 1063 and 1246, § 5: Apr. 12, 1993, Apr. 20, 1993, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly that the return transportation of bodies for which postmortem examination has been requested and completed is not the function of the State Crime Laboratory, and that such responsibility places an undue hardship on the resources available to the State Crime Laboratory and its personnel. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1151, § 11: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the Gen-

eral Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1642, § 7: Apr. 16, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that due to the extraordinary increase in the number of illicit drug laboratory and criminal drug related cases filed throughout the state additional state resources are needed to examine and identify evidence turned over to the State Crime Laboratory; that constructing and equipping regional crime laboratories will provide the most efficient and effective method of meeting these demands; and that the effectiveness of this Act on the date of its passage and approval is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond the date of its passage and approval could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved

nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 69, § 2: Feb. 8, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that families of firefighters and police officers, or other persons with a similar eligibility under the two (2) acts specified in subdivision (c)(1)(B) of this section who have died as a result of performing emergency services for their communities have not received timely access to awards programs that would assist the families in their time of crisis; and that those families are suffering unnecessarily, because the awards have not been readily available. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 839, § 10: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the donation of parts of human bodies provides a significant source for protecting the health and safety of the citizens of Arkansas; and that continuous advances in the technology of human transplants and the inherent limitations incident to transplantation from dead bodies require that this act become effective immediately. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

CASE NOTES

Evidence of Death.

There may be sufficient evidence of death, even in the absence of evidence of results of an autopsy or a medical doctor's opinion as to the cause of death. *Sims v.*

State, 258 Ark. 940, 530 S.W.2d 182 (1975).

Cited: *Henderson v. State*, 279 Ark. 414, 652 S.W.2d 26 (1983).

12-12-301. Establishment.

(a) There is established a State Crime Laboratory.

(b) The laboratory shall offer services to law enforcement in pathology and biology, toxicology, criminalistics, raw drug analysis, latent fingerprint identification, questioned documents examination, firearms and toolmarks identification, and in other such areas as the State Crime Laboratory Board may deem necessary and appropriate.

History. Acts 1977, No. 517, § 1; 1979, No. 864, § 1; A.S.A. 1947, § 42-1201.

Publisher's Notes. Acts 1979, No. 864, § 1, provided, in part, that the office of the state medical examiner; the firearms and toolmarks identification, latent fingerprints, and questioned documents examination functions of the Arkansas State Police; and the Drug Analysis Laboratory of the State Health Department were transferred to and merged into the State Crime Laboratory.

Acts 1981, No. 45, § 6, provided that the State Crime Laboratory, which was located within the Department of Public Safety (abolished by Acts 1981, No. 45,

§ 1), and all its powers, functions, duties, personnel, and funds would be detached from that department and that the State Crime Laboratory would be operated as an independent state agency.

The section further provided that the members of the State Crime Laboratory Board and the officers and personnel of the State Crime Laboratory, including its head, would continue to be appointed in the same manner as then provided by law.

The section further provided that nothing in the act should be construed to reduce any right which an employee of the State Crime Laboratory had under any civil service or merit system.

12-12-302. Board created — Members — Meetings.

(a)(1) There is created a State Crime Laboratory Board to be composed of eight (8) members.

(2)(A) The Dean of the University of Arkansas for Medical Sciences, College of Medicine, shall serve as a member. The remaining seven (7) members of the board shall be appointed by the Governor and confirmed by the Senate.

(B) However, a vacancy may be temporarily filled by the Governor until the Senate shall next meet.

(b) The members appointed by the Governor shall be composed of:

- (1) One (1) member of the active judiciary;
- (2) One (1) practicing member of the legal profession;
- (3) One (1) active county sheriff;
- (4) One (1) active chief of police;
- (5) One (1) active prosecuting attorney;

(6) One (1) physician engaged in the active practice of private or academic medicine; and

(7) One (1) member at large from the state.

(c)(1) Appointments to the board shall be for a term of seven (7) years.

(2)(A) All appointments made at any time other than the day following the expiration of a term shall be made for the unexpired portion of the term.

(B) If, however, the Governor shall not make an appointment by January 15 of the year in which the term expires, that member shall continue to serve until he or she is reappointed or a successor is appointed, and the term of that member shall run for seven (7) years from January 15 in the year the term expired rather than for seven (7) years from the date of actual appointment.

(d)(1) The board shall meet and elect one (1) of its members as chair and one (1) as vice chair.

(2) The chair shall have the power to call meetings of the board upon due notice of the meeting to all members of the board.

(e) A majority of the members of the board shall constitute a quorum to transact the business of the board.

(f) The board shall meet a minimum of one (1) time every three (3) months. Failure of any appointee to attend three (3) consecutive meetings shall constitute cause for removal from the board by the Governor.

(g) Members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq. The sums shall be paid from the appropriated maintenance and general operations funds of the State Crime Laboratory.

History. Acts 1991, No. 383, § 2; 1997, No. 250, § 67.

Publisher's Notes. Former § 12-12-302, concerning the creation of the State Crime Laboratory Board, was repealed by Acts 1991, No. 383, § 1. The former section was derived from Acts 1977, No. 517, § 2; 1979, No. 864, §§ 2-4; A.S.A. 1947, §§ 42-1203, 42-1205, 42-1206.

Acts 1991, No. 383, § 1, provided, in part, that the State Crime Laboratory

Board created under former § 12-12-302 and the State Medical Examiner Commission created under former § 12-12-306 are abolished and the terms of their members shall expire on July 15, 1991. Section 1 also provided that the powers and duties of the former State Crime Laboratory Board and the former State Medical Examiner are transferred to a new board created under present § 12-12-302 known as the State Crime Laboratory Board.

12-12-303. Board's powers and duties generally.

(a) The State Crime Laboratory Board shall promulgate such policies, rules, and regulations as shall be necessary to carry out the intent and purpose of this subchapter along with the specific duties and responsibilities set out in this subchapter.

(b) The board is authorized to accept gifts, grants, or funds from persons, associations, corporations, foundations, and federal or state governmental agencies and to use the gifts, grants, or funds for purposes of carrying out this subchapter or for any other purposes not

inconsistent with the purposes and intent of this subchapter which may be authorized by the board.

(c) The board is further authorized by this subchapter to enter into contracts, not inconsistent with law, and to do such things as it may deem necessary or appropriate to properly carry out the purposes and intent of this subchapter.

History. Acts 1979, No. 864, §§ 4, 21;
A.S.A. 1947, §§ 42-1206, 42-1223.

12-12-304. Executive director.

(a) The State Crime Laboratory shall be headed by an executive director who shall be appointed by the Governor.

(b) The Executive Director of the State Crime Laboratory may delegate specific duties to competent and qualified associates, assistants, and deputies who may act for the executive director within the scope of the authority granted him or her, subject, however, to such rules and regulations as may be prescribed by the State Crime Laboratory Board.

(c) The board shall prescribe the duties, responsibilities, compensation, and qualifications for the executive director.

History. Acts 1979, No. 864, §§ 5, 6;
A.S.A. 1947, §§ 42-1207, 42-1208.

12-12-305. Housing and equipment — Functions.

(a) There shall be established under the supervision of the Executive Director of the State Crime Laboratory a central office and laboratory facility sufficient and adequate to house the various functions of the laboratory as set out in this subchapter and as may be necessary and proper for the laboratory to perform in carrying out its official duties and functions as provided by law.

(b) The laboratory shall have such equipment and personnel as is necessary to respond to the needs of all law enforcement agencies in the State of Arkansas with respect to the following functions:

(1) Forensic toxicology, which shall include, but is not limited to, chemical testing and analysis of body fluids and the performance of procedures to determine the presence and significance of toxic agents both in the investigation of death cases authorized by this subchapter and in other appropriate cases;

(2) Criminalistics, which shall include, but is not limited to, chemical testing of trace evidence, physical and microscopic analysis of evidence, questioned document examination and classification, latent fingerprint identification and classification, firearms and toolmarks identification and analysis, and serology;

(3) Drug analysis, which shall include, but is not limited to, analyzing and identifying substances suspected as being controlled, illicit, or contraband drugs;

(4) Pathology and biology, which shall include investigating and making a determination of the cause and manner of deaths which become subject to the jurisdiction of the State Medical Examiner as set out in § 12-12-318 and shall include the general application of the medical sciences to assist the criminal justice system in the State of Arkansas; and

(5) Any other laboratory divisions, sections, or functions which, in the opinion of the State Crime Laboratory Board, may serve the needs of law enforcement in the State of Arkansas for laboratory analysis.

History. Acts 1979, No. 864, §§ 7, 8;
A.S.A. 1947, §§ 42-1209, 42-1210.

12-12-306. State medical examiner.

(a) The State Crime Laboratory Board shall appoint and employ a State Medical Examiner.

(b) The board may remove the examiner only for cause.

History. Acts 1991, No. 383, § 3.

Publisher's Notes. Former § 12-12-306, concerning the State Medical Examiner Commission, was repealed by Acts 1991, No. 383, § 1. The former section was derived from Acts 1969, No. 321, §§ 1, 3; A.S.A. 1947, §§ 42-611, 42-613.

Acts 1991, No. 383, § 1, provided, in part, that the State Crime Laboratory Board created under former § 12-12-302

and the State Medical Examiner Commission created under former § 12-12-306 are abolished and the terms of their members shall expire on July 15, 1991. Section 1 also provided that the powers and duties of the former State Crime Laboratory Board and the former State Medical Examiner are transferred to a new board created under present § 12-12-302 known as the State Crime Laboratory Board.

12-12-307. Medical examiners — Qualifications — Duties.

(a)(1) The State Medical Examiner as well as associate medical examiners shall:

(A) Be citizens of the United States;

(B) Be physicians or surgeons with a doctor of medicine degree who have been licensed or who are eligible to be licensed to practice medicine in the State of Arkansas;

(C) Have a minimum of three (3) years postgraduate training in human pathology as recognized by the American Medical Association; and

(D) Have had at least one (1) year of experience in medical-legal practice.

(2) The State Medical Examiner shall also be board certified or eligible for board certification as recognized by the American Board of Pathology in Forensic Pathology.

(b) In addition to the duties prescribed in this subchapter, the State Medical Examiner and his or her associates may teach in the medical school, conduct classes for law enforcement officers and officials, lecture, do research, and engage in such activities as shall be deemed appropriate by the State Crime Laboratory Board.

History. Acts 1979, No. 864, § 9; A.S.A. 1947, § 42-1211.

12-12-308. Medical examiners — Professional liability insurance.

(a) The State Crime Laboratory shall obtain a policy of professional liability insurance in the amount of no less than four hundred thousand dollars (\$400,000) to indemnify any person or persons injured by the State Medical Examiner or his or her associates in the performance of their duties under this subchapter.

(b) The premium for the policy of insurance shall be paid from funds appropriated by the General Assembly for the maintenance and general operations of the State Crime Laboratory.

History. Acts 1979, No. 864, § 19; A.S.A. 1947, § 42-1221.

12-12-309. Utilization of outside personnel.

(a) The State Crime Laboratory Board is empowered to authorize the Executive Director of the State Crime Laboratory to contract with the University of Arkansas for Medical Sciences, University of Arkansas for Medical Sciences Medical Center, or with other persons or institutions to obtain services with which to perform the duties set forth in this subchapter.

(b) The participation of the University of Arkansas for Medical Sciences faculty or of any other person in carrying out the provisions of this subchapter shall in no way affect tenure or any other status with any such institution or agency.

History. Acts 1979, No. 864, § 5; A.S.A. 1947, § 42-1207.

12-12-310. Reimbursement for use of outside faculty.

(a) The State Crime Laboratory shall reimburse the University of Arkansas for Medical Sciences Medical Center and the Graduate Institute of Technology for the use of personnel from those institutions in performing services for the laboratory.

(b) The participation of center faculty and institute faculty in carrying out the provisions of this subchapter shall in no way affect their tenure with their institution.

History. Acts 1977, No. 517, § 3; A.S.A. 1947, § 42-1204.

12-12-311. Cooperation by others required — Tort immunity.

(a)(1) All law enforcement officers and other state, county, and city officials, as well as private citizens, shall fully cooperate with the staff

of the State Crime Laboratory in making any investigation provided for or authorized in this subchapter.

(2)(A) The prosecuting attorney for each judicial district shall provide the laboratory each month with a list of cases having been adjudicated through plea negotiations and which require no further laboratory analysis.

(B) The monthly list shall contain the laboratory case number and will be used by the laboratory for the purpose of returning evidence on which analysis is no longer necessary, thus reducing the backlog of cases found on the evidence shelves at the laboratory.

(3) Nothing in this subchapter shall impair the authority of the prosecuting attorney to require further analysis of evidence in any case having been adjudicated through plea negotiations.

(4)(A) Upon completion of all requested analysis of submitted evidence by the laboratory, the evidence shall be returned to the submitting agency within thirty (30) days.

(B) The submitting agency shall maintain and store evidence until released by a court of competent jurisdiction or the prosecuting attorney.

(b) Any physician or other person in attendance or present at the death of a person or any hospital, if death occurs therein and results from such conditions and circumstances as set out in § 12-12-315 shall promptly notify the chief law enforcement official of the county or municipality which shall have jurisdiction and the laboratory of the death and shall assist in making available dead bodies and related evidence as may be requested by the Executive Director of the State Crime Laboratory or his or her staff or by the law enforcement agency conducting the investigation.

(c) Any physician, surgeon, dentist, hospital, or other supplier of health care services shall cooperate and make available to the executive director or his or her staff the records, reports, charts, specimens, or x-rays of the deceased as may be requested where death occurs and an investigation is being conducted under the provisions of this subchapter.

(d) No person, institution, or office in this state which shall make available information or material under this section shall be liable for violating any criminal law of this state, nor shall any person, institution, or office be held liable in tort for compliance with this section.

History. Acts 1979, No. 864, § 12; A.S.A. 1947, § 42-1214; Acts 1999, No. 767, § 1.

12-12-312. Records confidential and privileged — Exception — Release.

(a)(1)(A)(i) The records, files, and information kept, obtained, or retained by the State Crime Laboratory under the provisions of this subchapter shall be privileged and confidential.

(ii) The records, files, and information shall be released only under and by the direction of a court of competent jurisdiction, the prosecuting attorney having criminal jurisdiction over the case, or the public defender appointed or assigned to the case.

(B)(i) Nothing in this section shall be construed to diminish the right of a defendant or his or her attorney to full access to all records pertaining to the case.

(ii) The laboratory shall disclose to a defendant or his or her attorney all evidence in the defendant's case.

(2) However, a full report of the facts developed by the State Medical Examiner or his or her assistants shall be promptly filed with the law enforcement agencies, county coroner, and prosecuting attorney of the jurisdiction in which the death occurred.

(b) The State Crime Laboratory Board shall promulgate rules and regulations not contrary to law regarding the release of reports and information by the staff of the laboratory.

(c) All records, files, and information obtained or developed by the laboratory pertaining to a capital offense committed by a defendant who is subsequently sentenced to death for the commission of that offense shall be preserved and retained until the defendant's execution.

History. Acts 1969, No. 321, § 11; 1999, No. 519, § 1; 2001, No. 211, § 1; 1979, No. 864, § 16; A.S.A. 1947, §§ 42-621, 42-1218; Acts 1993, No. 1304, § 1; 2001, No. 917, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Management, 24 U. Ark. Little Rock L. Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency Rev. 501.

12-12-313. Records as evidence — Analyst's testimony.

(a) The records and reports of autopsies, evidence analyses, drug analyses, and any investigations made by the State Crime Laboratory under the authority of this subchapter shall be received as competent evidence as to the matters contained therein in the courts of this state subject to the applicable rules of criminal procedure when duly attested to by the Executive Director of the State Crime Laboratory or his or her assistants, associates, or deputies.

(b) Nothing in this section shall be deemed to abrogate a defendant's right of cross-examination if notice of intention to cross-examine is given prior to the date of a hearing or trial pursuant to the applicable rules of criminal procedure.

(c) The testimony of the appropriate analyst may be compelled by the issuance of a proper subpoena, in which case the records and reports shall be admissible through the analyst who shall be subject to cross-examination by the defendant or his or her counsel, either in person or via two-way closed-circuit or satellite-transmitted television pursuant to subsection (e) of this section.

(d)(1) All records and reports of an evidence analysis of the laboratory shall be received as competent evidence as to the facts in any court or other proceeding when duly attested to by the analyst who performed the analysis.

(2) The defendant shall give at least ten (10) days' notice prior to the proceedings that he or she requests the presence of the analyst of the laboratory who performed the analysis for the purpose of cross-examination.

(3) Nothing in this subsection shall be construed to abrogate the defendant's right to cross-examine.

(e) Except trials in which the defendant is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, in all criminal trials upon motion of the prosecutor the court may allow the prosecutor to present the testimony of the appropriate analyst by contemporaneous transmission from a laboratory facility via two-way closed-circuit or satellite-transmitted television which shall allow the examination and cross-examination of the analyst to proceed as though the analyst were testifying in the courtroom:

(1) After notice to the defendant;

(2) Upon proper showing of good cause and sufficient safeguards to satisfy all state and federal constitutional requirements of oath, confrontation, cross-examination, and observation of the witness's demeanor and testimony by the defendant, the court, and the jury; and

(3) Absent a showing of prejudice by the defendant.

History. Acts 1979, No. 864, § 18; A.S.A. 1947, § 42-1220; Acts 1989, No. 889, §§ 1, 2; 1999, No. 565, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Criminal Law, 12 U. Ark. Little Rock L.J. 617.

CASE NOTES

ANALYSIS

Purpose.

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Crime Lab Report.

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Purpose.

The purpose of this section is to remove reports, as described in subdivision (d)(1), from exclusion under the hearsay rule and make them admissible when certain requirements designed to establish their trustworthiness have been met. *Hendrix v. State*, 40 Ark. App. 52, 842 S.W.2d 443 (1992); *Dodson v. State*, 326 Ark. 637, 934 S.W.2d 198 (1996).

The purpose of this section is to remove reports from exclusion under the hearsay rule, not to require that they always be

admitted for any reason. *Echols v. State*, 326 Ark. 917, 936 S.W.2d 509 (1996), cert. denied, *Echols v. Arkansas*, 520 U.S. 1244, 117 S. Ct. 1853, 137 L. Ed. 2d 1055 (1997).

Applicability.

This section does not apply when the serologist who compiled the report testifies in person. *Williams v. State*, 322 Ark. 38, 907 S.W.2d 120 (1995).

Compliance.

The prosecution may introduce a drug analysis report through the testimony of a chemist who had not personally performed the test, if the report contains an attestation by the chemist who is purported to have performed the test; there is no notarization requirement. *Willis v. State*, 309 Ark. 328, 829 S.W.2d 417 (1992).

Contents of Report.

Hearsay statements contained in a serologist's report were not admissible and the names of suspects listed on the document would not be admitted unless there was some evidence to connect the suspects with the crimes; evidence that a third party may have committed the crime is inadmissible unless it points directly to the guilt of the third party. *Echols v. State*, 326 Ark. 917, 936 S.W.2d 509 (1996), cert. denied, *Echols v. Arkansas*, 520 U.S. 1244, 117 S. Ct. 1853, 137 L. Ed. 2d 1055 (1997).

Crime Lab Report.

If a chemist's crime lab report fails to meet the prerequisites of this section, it is considered inadmissible hearsay under Evid. Rule 803(8)(iii); however, even when the state's report meets the statutory requirements and where the state intends to introduce the report as an exception to the hearsay rule, a defendant may, under subdivision (d)(2) of this section, still require the chemist's presence for the purpose of cross-examination, if the defendant requests the chemist's presence at least ten days prior to trial. *Lockhart v. State*, 314 Ark. 394, 862 S.W.2d 265 (1993).

A facsimile copy of the crime lab report that contained the analyst's attestation, rather than the copy itself, held admissible. *Ingram v. State*, 48 Ark. App. 105, 891 S.W.2d 805 (1995).

Cross-Examination.

While the procedural rule requiring pre-trial notice of demand for the right of

cross-examination of a laboratory employee is generally a reasonable one, there can be no reasonable basis for enforcing such a rule where it is not possible for the accused to comply. *Hendrix v. State*, 40 Ark. App. 52, 842 S.W.2d 443 (1992).

If, because this section does not contain a reasonable procedure for asserting the right of confrontation of laboratory employees, the trial has begun, the assertion of that right when it does arise is all that is required of the accused and casts upon the state the burden of either producing the witness for cross-examination or requesting a continuance in order to produce him. *Hendrix v. State*, 40 Ark. App. 52, 842 S.W.2d 443 (1992).

Trial court did not err in refusing to allow defendant the opportunity to question crime lab personnel after he had properly demanded to do so as it was a felony to sell counterfeit drug substances under § 5-64-401(b); defendant had committed an offense punishable by incarceration and was subject to a revocation of his probation, whether or not the substances found in the two baggies were narcotics, thus, the crime lab personnel's testimony was not necessary to prove the prosecution's case. *Roston v. State*, 362 Ark. 408, 208 S.W.3d 759 (2005).

"Duly Attested."

The General Assembly intended for the phrase "duly attested to" to require more than the mere signature of the person or chemist who performed that analysis. *Nard v. State*, 304 Ark. 159, 801 S.W.2d 634 (1991); *Willis v. State*, 309 Ark. 328, 829 S.W.2d 417 (1992).

Where the chemist's report is stamped a certified copy and notarized the duly attested requirement is not fulfilled. *Nard v. State*, 304 Ark. 159, 801 S.W.2d 634 (1991).

Attestation contained on the face of chemist's report held sufficient. *Dodson v. State*, 326 Ark. 637, 934 S.W.2d 198 (1996).

Indicia of Truthfulness.

Some indicia of truthfulness must attend a chemist report's admissibility when it is introduced into a criminal proceeding as competent evidence. That assurance of truthfulness can best be given by the one who performed the test and made the analysis as is provided by sub-

division (d)(1) of this section. *Nard v. State*, 304 Ark. 159, 801 S.W.2d 634 (1991).

Noncompliance.

It was error for the trial court to admit into evidence a chemical analysis report which did not conform to the requirements of subdivision (d)(1) of this section; however, when considering the report and other evidence presented by the state, sufficient evidence existed to support the conviction or count in issue and it was therefore proper to remand on that count for possible retrial rather than dismiss the count. *Nard v. State*, 304 Ark. 159, 801 S.W.2d 634 (1991).

Admission of crime laboratory chemist's report, over defendant's objection and without permitting defendant to cross-examine laboratory employees, contributed to defendant's conviction of delivery of a controlled substance, and since its admission was not harmless beyond a reasonable doubt, defendant's conviction was reversed and remanded. *Hendrix v. State*, 40 Ark. App. 52, 842 S.W.2d 443 (1992).

Right of Confrontation.

Because this section does not contain a reasonable procedure for asserting the right of confrontation when that right arises after the trial has begun, the assertion of that right when it does arise is all that is required of the accused and casts upon the state the burden of either pro-

ducing the witness for cross-examination or requesting a continuance in order to produce him. *Lockhart v. State*, 314 Ark. 394, 862 S.W.2d 265 (1993).

The state has the burden of producing the chemist or obtaining a continuance when the state has caused the defendant to be unable to comply with this section's ten-day notice prerequisite; however, defendant is required to inform the state that he desires to have the analyst present at trial so the state will know it has the burden to produce the analyst as a witness. *Lockhart v. State*, 314 Ark. 394, 862 S.W.2d 265 (1993).

The defendant failed to show that he was deprived of his right of confrontation when the physician who actually performed an autopsy on the murder victim could not appear at trial and another physician from the laboratory testified in his place since he failed to show that he was prejudiced by the absence of the former physician. *Marta v. State*, 336 Ark. 67, 983 S.W.2d 924 (1999).

Waiver.

If the defendant does not give the statutory notice prior to the proceedings that he wants the person who performed the analysis to be present for cross-examination, the right of confrontation is waived. *Johnson v. State*, 303 Ark. 12, 792 S.W.2d 863 (1990).

Cited: *Robinson v. State*, 317 Ark. 512, 879 S.W.2d 419 (1994); *Sanford v. State*, 331 Ark. 334, 962 S.W.2d 335 (1998).

12-12-314. Fees — Disposition.

(a) The State Crime Laboratory shall charge certain fees in an amount to be determined by the State Crime Laboratory Board, but subject to the limitations set forth in this section for certain records, reports, and consultations by laboratory physicians and analysts, and expert witness testimony provided in the trial of civil lawsuits, as follows:

(1) A fee shall be charged for records and reports of the laboratory in a reasonable amount to be set by the board when the request for the report shall be from other than a law enforcement or criminal justice system agency;

(2)(A) A fee shall be charged in an amount to be set by the board for consultations, scientific or medical research, depositions, expert witness testimony, and travel to and from courts.

(B) The fees shall be at a rate not to exceed seventy-five dollars (\$75.00) per hour or six hundred dollars (\$600) per day and shall be

levied against the requesting individual, agency, or organization for work done in civil cases in which laboratory personnel involvement results from the performance of duties and responsibilities under this subchapter; and

(3) A charge of up to one thousand dollars (\$1,000) for each autopsy requested by non-law enforcement officials.

(b) At no time shall any fee be levied or charge made to or against any law enforcement agency of the State of Arkansas for work performed under the provisions of this subchapter.

(c)(1) All fees collected by the laboratory for copies of autopsy reports, autopsies requested by the Federal Aviation Administration, and expenses paid employees for testimony as expert witnesses shall be deposited as a refund to expenditures.

(2) Other moneys derived from the charges provided for and authorized by this section shall be deposited into the State Treasury to the credit of the Miscellaneous Agencies Fund Account of the State General Government Fund.

History. Acts 1975, No. 350, § 4; 1979, 1947, §§ 42-1224, 42-1225; Acts 1995, No. No. 864, § 22; 1985, No. 644, § 4; A.S.A. 1189, § 1.

12-12-315. Notification of certain deaths.

(a)(1) The county coroner, prosecuting attorney, and either the county sheriff or the chief of police of the municipality in which the death of a human being occurs shall be promptly notified by any physician, law enforcement officer, undertaker or embalmer, jailer, or coroner or by any other person present or with knowledge of the death if:

(A) The death appears to be caused by violence or appears to be the result of a homicide or a suicide or to be accidental;

(B) The death appears to be the result of the presence of drugs or poisons in the body;

(C) The death appears to be a result of a motor vehicle accident, or the body was found in or near a roadway or railroad;

(D) The death appears to be a result of a motor vehicle accident and there is no obvious trauma to the body;

(E) The death occurs while the person is in a state mental institution or hospital and there is no previous medical history to explain the death, or while the person is in police custody or jail other than a jail operated by the Department of Correction;

(F) The death appears to be the result of a fire or an explosion;

(G) The death of a minor child appears to indicate child abuse prior to death;

(H) Human skeletal remains are recovered or an unidentified deceased person is discovered;

(I) Postmortem decomposition exists to the extent that an external examination of the corpse cannot rule out injury, or in which the circumstances of death cannot rule out the commission of a crime;

(J) The death appears to be the result of drowning;

(K) The death is of an infant or a minor child under eighteen (18) years of age;

(L) The manner of death appears to be other than natural;

(M) The death is sudden and unexplained;

(N) The death occurs at a work site;

(O) The death is due to a criminal abortion;

(P) The death is of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or, in prediagnosed terminal or bedfast cases, within thirty (30) days;

(Q) A person is admitted to a hospital emergency room unconscious and is unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or, in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital;

(R) The death occurs in the home; or

(S)(i) The death poses a potential threat to public health or safety.

(ii) Upon receiving notice of a death that poses a potential threat to public health or safety, the county coroner shall immediately notify the Department of Health.

(2) Nothing in this section shall be construed to require an investigation, autopsy, or inquest in any case in which death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means in accordance with the tenets and practices of a well-recognized church or religious denomination.

(b) With regard to any death in a correctional facility, the county coroner and the State Medical Examiner shall be notified, and when previous medical history does not exist to explain the death, the Department of Arkansas State Police shall be notified.

(c) A violation of the provisions of this section is a Class A misdemeanor.

History. Acts 1969, No. 321, § 5; 1973, No. 509, § 1; 1979, No. 864, § 10; 1985, No. 216, § 1; A.S.A. 1947, §§ 42-615, 42-1212; Acts 1993, No. 1302, § 1; 1995, No. 311, § 2; 2001, No. 80, § 2; 2007, No. 194, § 1; 2007, No. 594, § 1; 2009, No. 165, § 3; 2009, No. 1286, § 1.

A.C.R.C. Notes. Acts 2001, No. 80, § 2, stated that “Arkansas Code 12-12-315(a) is amended to read as follows:” and then set out only subdivision (a)(1) of the section. As subdivision (a)(2) was neither contained in nor deleted from (a) as set

out in Acts 2001, No. 80, the act was interpreted as amending subdivision (a)(1) only.

Amendments. The 2007 amendment by No. 194 substituted “under eighteen (18) years of age” for “in cases in which there is no previous medical history to explain the death” in (a)(1)(K).

The 2007 amendment by No. 594 added (a)(1)(S) and made related changes.

The 2009 amendment by No. 165 substituted “Department of Health” for “Department of Human Services” in

(a)(1)(S)(ii), and made a minor punctuation change.

The 2009 amendment by No. 1286 rewrote the introductory language of (a)(1); substituted “or jail other than a jail operated by the Department of Correction” for “a jail or a penal institution” in (a)(1)(E); added (b); and redesignated former (b) as (c).

Cross References. Coroner may collect and secure decedent’s prescription medication, § 14-15-306.

Coroner’s investigation, § 14-15-302.

Fines, § 5-4-201.

Imprisonment, § 5-4-401.

CASE NOTES

ANALYSIS

Purpose.

Authority to Conduct Autopsy.

Purpose.

The purpose of this section is to create a scientific and uniform method of investigating violent and unusual deaths. *Stewart v. State*, 257 Ark. 753, 519 S.W.2d 733 (1975), cert. denied, *Stewart v. Arkansas*, 423 U.S. 859, 96 S. Ct. 113, 46 L. Ed. 2d 86 (1975).

Authority to Conduct Autopsy.

Notification provisions of this section did not establish exclusive authority to conduct autopsies so as to prohibit an experienced pathologist who was not a qualified medical examiner from performing autopsy and then testifying. *Stewart v. State*, 257 Ark. 753, 519 S.W.2d 733 (1975), cert. denied, *Stewart v. Arkansas*, 423 U.S. 859, 96 S. Ct. 113, 46 L. Ed. 2d 86 (1975).

12-12-316. Transportation of corpses.

(a) The State Crime Laboratory is authorized to transport bodies of persons whose death is subject to the provisions of this subchapter to an appropriate place for autopsy or for any other scientific tests.

(b)(1)(A) The bodies of such deceased persons shall be returned to the county from which they were brought by or at the expense of the laboratory only if the State Medical Examiner determines that the cause of death was not suicide, accidental, or from natural causes.

(B) In cases in which the examiner determines that the cause of death was suicide, accidental, or from natural causes, the expense of transporting and returning the bodies of such deceased persons shall be borne by whomever requests the laboratory to examine the cause of death, except for cases referred under the provisions of § 12-12-315(a)(2).

(C) A body may be transported when authorized by the prosecuting attorney, circuit court, county sheriff, or chief of police, or upon the request of the next of kin of the deceased or the persons who may be responsible for burial, to a place other than the county of origin.

(2) The laboratory shall not, however, be required to provide actual transportation or the cost of transportation in excess of what would be required to return the body to the county of origin.

(c) The laboratory shall provide transportation or shall bear the cost of transportation at the option of the Executive Director of the State Crime Laboratory, but in no case shall the cost of transportation of dead

bodies subject to the provisions of this subchapter be borne by the laboratory without the prior approval and authorization of the executive director or his or her staff.

History. Acts 1979, No. 864, § 13; A.S.A. 1947, § 42-1215; Acts 1993, No. 1063, § 1; 1993, No. 1246, § 1. **Cross References.** Transportation of the dead, § 20-7-115.

12-12-317. Death certificates.

(a) The certificate of death of any person whose death is investigated under the provisions of this subchapter shall be made by the State Medical Examiner or by his or her designee or by the county coroner, whoever shall have conducted the investigation.

(b) However, where a postmortem examination has been performed, the certificate of death shall be made and signed by the examiner or his or her associates or assistants, whoever shall have performed the postmortem examination.

(c) When a petition is filed with a court of competent jurisdiction to change the cause or manner of death listed on a death certificate which has been signed by the examiner or by his or her designee, the laboratory shall be notified of such petition, and the examiner or his or her designee shall be allowed to hear testimony presented by the petitioner and shall be given an opportunity to present evidence to the court to support the original ruling of the examiner or his or her assistant who signed the certificate.

History. Acts 1979, No. 864, § 17; A.S.A. 1947, § 42-1219; Acts 1993, No. 177, § 1; 1995, No. 201, § 1.

12-12-318. Examinations, investigations, and postmortem examinations — Authorization and restrictions.

(a)(1) When death occurs in such a manner or under such circumstances as described in § 12-12-315, the State Crime Laboratory shall have the power and authority to perform such functions and duties as may be provided by this subchapter.

(2)(A) The laboratory shall make examinations, investigations, or perform postmortem examinations to determine the cause of death as the Executive Director of the State Crime Laboratory or his or her staff deems necessary or as may be requested by the:

(i) County coroner of the county in which death occurs or is discovered;

(ii) Prosecuting attorney of the jurisdiction in which death occurs or is discovered;

(iii) Prosecuting attorney of the jurisdiction in which death occurs or is discovered;

(iv) Chief of police of the city in which death occurs or is discovered;

(v) Board of Corrections or its designee, or the Director of the Department of Correction or his or her designee if the person was in the care, custody, or control of the Department of Correction at the time of death; or

(vi) Director of the Department of Arkansas State Police or his or her designee.

(B) Deputies of elected officers enumerated in subdivision (a)(2)(A) of this section shall have no authority to request a postmortem examination by the laboratory.

(b)(1) In cases of sudden death in children between the ages of one (1) year and six (6) years with no previous major medical health problems, the State Medical Examiner, on a case-by-case basis, may delegate authority to the Arkansas Children's Hospital to perform postmortem examinations to determine the cause of death.

(2)(A) Should any such postmortem examination determine that death occurred from foul play or a criminal act, the hospital will immediately notify the chief law enforcement officer of the jurisdiction in which the death occurred and the examiner.

(B) In addition, the examiner will be responsible for developing guidelines to assure that proper evidentiary procedures are followed.

(3) For purposes of this section, the hospital's staff pediatric pathologist, meeting the criteria prescribed in § 12-12-307, shall be considered assistant medical examiner and, notwithstanding any other provisions in this section, may perform postmortem examinations as directed by a duly constituted authority.

(c) Postmortem examinations or investigations authorized in this section may be conducted without consent of any person.

(d) The executive director and his or her staff shall not, as a part of their official duties, perform any postmortem examination at the request of any private citizen or any public official other than those enumerated in this section.

(e) The provisions of this section shall supersede any and all other laws relating to the power and authority of the executive director or his or her staff, including the examiner, to conduct examinations, investigations, or postmortem examinations.

(f)(1) The executive director shall have the final authority on any ruling of manner of death which may become a matter of dispute between those persons authorized by this section to request a post mortem examination as described in § 12-12-315 and the examiner or his or her associates.

(2) The executive director shall use any and all material accumulated by the laboratory, interview all parties necessary, and consult with any medical authority necessary for him or her to make his or her decision as to the manner of death, and his or her ruling shall be final and binding as that ruling affects any documents generated and signed by any employee of the laboratory relating to manner of death.

(3) This subsection and the executive director's decision in no way affects or prohibits any person or agency to seek any other relief that may be available through legal channels.

History. Acts 1969, No. 321, § 6; 1973, No. 509, § 2; 1975, No. 736, § 1; 1979, No. 864, § 11; 1981, No. 65, § 1; 1985, No. 644, § 3; A.S.A. 1947, §§ 42-616, 42-1213; Acts 1993, No. 178, § 1; 1995, No. 1151, § 5; 1997, No. 422, § 1.

CASE NOTES

Violations.

No violation of this section occurred where the deputy coroner observed the deceased at the crime scene, notified the State Crime Lab and took the body to the crime lab in a coroner's van, since the

county coroner also went to the crime scene, observed the body, and ordered it photographed and sent to the crime lab. *Cavin v. State*, 313 Ark. 238, 855 S.W.2d 285 (1993).

12-12-319. Embalming corpse subject to examination, investigation, or autopsy — Penalty.

(a) It shall be unlawful to embalm a dead body when the body is subject to examination by the State Medical Examiner or his or her associates, assistants, or deputies as provided for in this subchapter, unless authorized by the examiner or his or her associates, assistants, or deputies or unless authorized by the prosecuting attorney of the jurisdiction in which the death occurs to so embalm.

(b) When a body subject to examination by the examiner or his or her associates has been embalmed without authorization by or prior notice to the examiner or his or her associates, assistants, or deputies as provided for in this subchapter, the Executive Director of the State Crime Laboratory may, at his or her discretion, require an order from the circuit court of the jurisdiction in which death occurred before proceeding with his or her duties and responsibilities under this subchapter.

(c) Persons violating the provisions of this section shall be deemed guilty of a Class C misdemeanor.

History. Acts 1979, No. 864, § 14; A.S.A. 1947, § 42-1216.

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

12-12-320. Autopsies — Removal of pituitary gland.

(a) The State Medical Examiner and his or her assistants are authorized to remove the pituitary gland during the course of an autopsy and donate the pituitary gland to the Arkansas Dwarf Association.

(b) However, the pituitary gland shall not be removed under the authority of this section if the next of kin or the person having the right to control the disposition of the decedent's remains objects.

History. Acts 1981, No. 984, § 1; A.S.A. 1947, § 42-1213.2.

12-12-321. Autopsies — Exhumed bodies.

(a) Where death occurs under such circumstances as are set forth in § 12-12-315 and where a body has been buried without proper certification of death, it shall be the duty of the chief law enforcement official of the county or municipality in which death occurred or in which the body is buried or the State Medical Examiner, his or her associates, assistants, or deputies to notify the prosecuting attorney of the jurisdiction in which death occurred and the body is buried.

(b) The prosecuting attorney shall thereupon present the facts to the circuit court of the county, and the court may, by written order, require that the body be exhumed and an autopsy be performed by the State Crime Laboratory or its designee.

(c) A full and complete report of the facts developed by the autopsy shall be furnished to the court and the prosecuting attorney in timely fashion.

(d) The cost of the exhumation and for transportation to and from the place of autopsy shall be borne by the county in which the death occurred.

History. Acts 1979, No. 864, § 15;
A.S.A. 1947, § 42-1217.

RESEARCH REFERENCES

ALR. Civil liability in conjunction with autopsy. 97 A.L.R.5th 419.

CASE NOTES**Grounds for Exhuming Body.**

Evidence held sufficient to justify trial court's order to exhume body and secure

autopsy. *Donaldson v. Holcomb*, 239 Ark. 958, 396 S.W.2d 281 (1965) (decision under prior law).

12-12-322. Hazardous duty pay.

(a)(1) The State Crime Laboratory is authorized to provide special compensation to certain employees for each full pay period of eighty (80) hours worked in a job which requires contact at crime scenes, emergency sites, or other sites where exposure to potentially hazardous substances is possible.

(2) It is recognized that many substances which may be encountered may create harmful health effects from either short-term or long-term exposure.

(3) This special pay is to compensate the employees for the increased risk of personal injury.

(4) The rate of pay will be one and one-half (1.5) times the regular authorized hourly pay or hourly rate of pay and will be paid only for the time while at the site of a clandestine laboratory.

(5) Payment will be controlled by the Executive Director of the State Crime Laboratory.

(b) The rate of pay for individuals who work less than a full pay period of eighty (80) hours or transfer to other work areas not defined in subsection (a) of this section, or both, will not receive any enhanced rate of pay for that or subsequent pay periods.

(c) This section covers employees who respond to clandestine laboratory sites for the purpose of assisting and dismantling of such laboratory sites and is limited to those employees in the position of:

	Class Code	Title
(1)	B048	Chief Forensic Chemist; Crime Lab Instrumentation Engineer, when performing the duties of a Forensic Chemist;
(2)	Y023	
(3)	B057	Forensic Chemist; and
(4)	N336	Latent Prints Examiner.

(d) A monthly report shall be made to the Legislative Council describing all payments made to employees under the provisions of this section.

History. Acts 1995, No. 1151, § 4;
1997, No. 254, [§ 1].

A.C.R.C. Notes. Acts 1997, No. 254, did
not contain a section heading.

12-12-323. Crime Lab Equipment Fund.

(a) There is created the Crime Lab Equipment Fund on the books of the Auditor of State, the Treasurer of State, and the Chief Fiscal Officer of the State.

(b) The moneys in the fund shall be used by the State Crime Laboratory only for:

- (1) The purchase of equipment;
- (2) Operating expenses;
- (3) Constructing and equipping regional crime laboratories; and
- (4) The personal services and operating expenses of regional crime laboratories.

History. Acts 1999, No. 1120, § 3; 2001, No. 1066, § 1; 2001, No. 1642, § 3.

Publisher’s Notes. Acts 1999, No. 1120, § 1, provided: “Legislative intent. As stated in the comment to section 505 of the Uniform Controlled Substances Act, ‘Effective law enforcement demands that there be a means of confiscating the vehicles and instrumentalities used by drug traffickers in committing violations under this act. The reasoning is to prevent their use in the commission of subsequent offenses involving transportation or concealment of controlled substances and to deprive the drug trafficker of needed mobility.’ The General Assembly recognizes

the importance of asset forfeiture as a means to confront drug trafficking. However, the General Assembly also recognizes that under the system that existed prior to the enactment of this act, the lack of uniformity and accountability in forfeiture procedures across the state has undermined confidence in the system. As the United States Supreme Court has stated, ‘Forfeiture provisions are powerful weapons in the war on crime; like any such weapons, their impact can be devastating when used unjustly.’ In order to alleviate the problems resulting from the lack of uniformity and accountability, the General Assembly has determined that time

limits for initiating forfeiture proceedings and stricter controls over forfeited property will help alleviate such problems while strengthening forfeiture as a vital weapon against drug trafficking. Specifically, it is the intent of § 5-64-505(a) that there be no forfeitures based solely upon a misdemeanor possession of a controlled substance. However, if the prosecuting attorney can prove that other evidence exists to establish a basis for forfeiture, the property may be forfeited. It is the intent of § 5-64-505(d) to reduce the conflict between state and federal authorities over seizures executed by state law enforcement officers. It is the intent of § 5-64-505(h) to allow law enforcement agencies and drug task forces to maintain

forfeited property for official use, provided that the final order disposing of such property defines the legal entity that is responsible for such property. Section 5-64-505(i)(1)(D) governs those situations in which a seizure results in the forfeiture of money and or property in excess of two hundred fifty thousand dollars (\$250,000). It is the specific intent of the General Assembly that forfeiture proceedings not be structured in such a way as to defeat the General Assembly's intent that money or property in excess of two hundred fifty thousand dollars (\$250,000) be transferred to the Special State Assets Forfeiture Fund. It is determined that such fund can best be used to combat drug trafficking statewide."

12-12-324. Testing by State Crime Laboratory.

(a)(1) All firearms used in the commission of a crime that come into the custody of any law enforcement agency in this state shall be delivered to the State Crime Laboratory within thirty (30) calendar days for ballistics testing.

(2) However, if the firearm is being used as evidence in a criminal case, then delivery shall take place within thirty (30) calendar days after the final adjudication of the criminal proceeding.

(b)(1)(A) The laboratory may conduct ballistics tests on all firearms received and input the resulting data into the National Integrated Ballistics Information Network of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(B) The ballistics tests may include, but not be limited to, firing of the weapon and electronic imaging of the bullets and casings.

(2) The laboratory shall coordinate with all participating agencies when investigations require the use of the National Integrated Bullet Identification Network's computer database.

(3) The laboratory shall provide written analysis reports and experts for testimony when feasible.

(4) After completion of the testing, the firearms shall be returned to the law enforcement agencies.

(5) When the law enforcement agency regains possession of the firearm, the law enforcement agency shall immediately notify the owner, unless the owner is prohibited by law from possessing the firearm, that the owner may regain possession of the firearm at the offices of the law enforcement agency.

(c) A law enforcement agency in this state may request the assistance of the Department of Arkansas State Police in tracing a firearm.

(d) A firearm seized by the Arkansas State Game and Fish Commission for violation of a commission regulation is exempt from this section.

(e) The State Crime Laboratory Board may adopt rules for the implementation of this section, including, but not limited to, rules regarding testing and submission procedures.

History. Acts 1999, No. 1558, §§ 1, 2; 2001, No. 788, § 1; 2005, No. 1257, § 1.

Amendments. The 2005 amendment redesignated former (a)(1)(A) and (B) as present (a)(1) and (a)(2); substituted “used in the commission of a crime that” for “which” in present (a)(1); deleted former (a)(2); substituted “laboratory may” for

“laboratory shall” in (b)(1)(A); in (b)(1)(B), substituted “tests may” for “tests shall” and “electronic imaging of” for “photographing”; deleted former (b)(5) and (d); redesignated former (b)(6) and (e) as present (b)(5) and (d); substituted “Department of Arkansas State Police” for “department” in (c); and added present (e).

12-12-325. [Repealed.]

Publisher’s Notes. This section, concerning autopsies and anatomical gifts, was repealed by Acts 2007, No. 839, § 3.

The section was derived from Acts 2005, No. 1782, § 1.

12-12-326. Autopsies — Line-of-duty death.

(a) As used in this section:

(1) “Eligible person” means a person with an eligibility similar to a firefighter or police officer under the Public Safety Officers’ Benefits Act of 1976 or the Hometown Heroes Survivors Benefits Act of 2003, 42 U.S.C. § 3796 et seq., as appropriate;

(2) “Firefighter” means any member of a fire department or fire fighting unit of the Arkansas Forestry Commission, any city of the first class or city of the second class, any town, or any unincorporated rural area of this state, who actively engages in the fighting of fires on either a regular or voluntary basis; and

(3) “Police officer” means any law enforcement officer engaged in official duty who is:

(A) A member of:

(i) Any regular or auxiliary police force on a full-time or part-time basis; or

(ii) The Department of Arkansas State Police; or

(B) A sheriff or deputy sheriff of any county.

(b) A coroner or a supervisor of a firefighter, police officer, or eligible person shall promptly notify the State Medical Examiner if the firefighter, police officer, or eligible person dies in the line of duty as a result of injuries sustained in the line of duty or within twenty-four (24) hours after participating in an emergency situation.

(c)(1)(A) The examiner may conduct an autopsy on any firefighter, police officer, or eligible person who dies in the line of duty as a result of injuries sustained in the line of duty or within twenty-four (24) hours after participating in an emergency situation.

(B) The autopsy shall be sufficient to determine eligibility for benefits under the federal Public Safety Officers’ Benefits Act of 1976 or the Hometown Heroes Survivors Benefits Act of 2003, 42 U.S.C. § 3796 et seq., as appropriate.

(C) A report of the autopsy shall be provided to the firefighter’s or police officer’s commanding officer or the supervisor of the eligible person.

(2)(A) If the firefighter, police officer, or eligible person has agreed in writing to allow an autopsy under this section, that directive shall be followed unless the firefighter’s, police officer’s, or eligible person’s spouse dictates otherwise after being notified of the prospective autopsy.

(B) If the firefighter, police officer, or eligible person has not agreed in writing to allow an autopsy under this section, the firefighter’s, police officer’s, or eligible person’s spouse may decide whether or not an autopsy will be performed.

(C) If the firefighter’s, police officer’s, or eligible person’s spouse chooses not to allow the autopsy:

- (i) No autopsy may be performed; and
- (ii) The body of the firefighter, police officer, or eligible person shall be released to the next of kin.

(3)(A) If the examiner does not perform an autopsy under this section, he or she shall provide to the firefighter’s or police officer’s commanding officer or the supervisor of the eligible person written notice stating the reason why an autopsy was not performed.

(B) The written notice under subdivision (c)(3)(A) of this section shall include a toxicology report.

History. Acts 2007, No. 69, § 1; 2009, No. 165, § 4.

Amendments. The 2009 amendment substituted “eligible person” for “other person with a similar eligibility under the two (2) acts specified in subdivision (c)(1)(B) of this section” or similar lan-

guage throughout the section; inserted (a)(1) and redesignated the remaining subdivisions accordingly; substituted “written notice under subdivision (c)(3)(A) of this section” for “letter” in (c)(3)(B); and made numerous minor stylistic changes.

SUBCHAPTER 4 — SEXUAL ASSAULT — MEDICAL-LEGAL EXAMINATIONS

SECTION.	SECTION.
12-12-401. Definitions.	12-12-404. Reimbursement of medical facility — Rules and regulations.
12-12-402. Procedures governing medical treatment.	12-12-405. License suspension or revocation.
12-12-403. Examinations and treatment — Payment.	

Effective Dates. Acts 1983, No. 403, § 10: Mar. 13, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present law regarding the providing of emergency medical treatment, and payment therefor, to victims of sexual assault

are unclear and in need of immediate clarification in order to maintain the financial integrity of the program, and that this act is immediately necessary to accomplish the same. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the

preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 396, § 10: Mar. 7, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain provisions of previous enactments of the General Assembly providing for reparations to crime victims failed to provide sufficient assessments to adequately fund the Crime Victims Repa-

rations Fund and that it is therefore necessary to increase the amounts assessed to compensate and assist victims of criminal acts who suffer personal injury or death. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

12-12-401. Definitions.

As used in this subchapter:

(1)(A) “Appropriate emergency medical-legal examinations” means health care delivered with emphasis on the collection of evidence for the purpose of prosecution.

(B) It shall include, but not be limited to, the appropriate components contained in an evidence collection kit for sexual assault examination distributed by the Forensic DNA Section of the State Crime Laboratory;

(2) “Licensed health care provider” means a person licensed in a health care field who conducts medical-legal examinations;

(3) “Medical facility” means any health care provider that is currently licensed by the Department of Health and providing emergency services; and

(4) “Victim” means any person who has been a victim of any alleged sexual assault or incest as defined by § 5-14-101 et seq. and § 5-26-202.

History. Acts 1983, No. 403, §§ 1-3; 1991, No. 612, § 1; 2001, No. 993, § 1; A.S.A. 1947, §§ 41-1820 — 41-1822; Acts 2003, No. 1390, § 3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Management, 24 U. Ark. Little Rock L. Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency Rev. 501.

12-12-402. Procedures governing medical treatment.

(a) All medical facilities or licensed health care providers conducting medical-legal examinations in Arkansas shall adhere to the procedures set forth in this section in the event that a person presents himself or herself or is presented for treatment as a victim of rape, attempted rape, any other type of sexual assault, or incest.

(b)(1)(A) Any adult victim presented for medical treatment shall make the decision of whether or not the incident will be reported to a law enforcement agency.

(B) No medical facility or licensed health care provider may require an adult victim to report the incident in order to receive medical treatment.

(C)(i) Evidence will be collected only with the permission of the victim.

(ii) However, permission shall not be required when the victim is unconscious, mentally incapable of consent, or intoxicated.

(2)(A) Should an adult victim wish to report the incident to a law enforcement agency, the appropriate law enforcement agencies shall be contacted by the medical facility or licensed health care provider or the victim's designee.

(B)(i) The victim shall be given a medical screening examination by a qualified medical person as provided under the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, as in effect on January 1, 2001, if the victim arrives at the emergency department of a hospital, and the person shall be examined and treated and any injuries requiring medical attention will be treated in the standard manner.

(ii) A medical-legal examination shall be conducted and specimens shall be collected for evidence.

(C) If a law enforcement agency has been contacted and with the permission of the victim, the evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(c)(1) Any victim under eighteen (18) years of age shall be examined and treated, and any injuries requiring medical attention shall be treated in the standard manner.

(2) A medical-legal examination shall be performed, and specimens shall be collected for evidence.

(3) The reporting medical facility or licensed health care provider shall follow the procedures set forth in Subchapter 4 of the Child Maltreatment Act, § 12-18-101 et seq., regarding the reporting of injuries to victims under eighteen (18) years of age.

(4) The evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(d) Reimbursement for the medical-legal examinations shall be available to the medical facility or licensed health care provider pursuant to the procedures set forth in § 12-12-403.

(e) The victim shall not be transferred to another medical facility unless:

(1)(A) The victim or a parent or guardian of a victim under eighteen (18) years of age requests the transfer; or

(B) A physician, or other qualified medical personnel when a physician is not available, has signed a certification that the benefits to the patient's health would outweigh the risks to the patient's health as a result of the transfer; and

(2) The transferring medical facility or licensed health care provider provides all necessary medical records and ensures that appropriate transportation is available.

History. Acts 1985, No. 400, §§ 1, 2; 1985, No. 838, §§ 1, 2; A.S.A. 1947, §§ 41-1828, 41-1829; Acts 1991, No. 612, § 2; 2001, No. 993, § 2; 2009, No. 758, § 23.

A.C.R.C. Notes. Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreat-

ment Act, § 12-18-101 et seq., becomes effective."

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Publisher's Notes. Acts 1985, No. 400, §§ 1, 2, and Acts 1985, No. 838, §§ 1, 2, are also codified as § 20-9-303.

Amendments. The 2009 amendment substituted "Subchapter 4 of the Child Maltreatment Act, § 12-18-101 et seq." for "§ 12-12-507" in (c)(3).

12-12-403. Examinations and treatment — Payment.

(a) All licensed emergency departments shall provide prompt, appropriate emergency medical-legal examinations for sexual assault victims.

(b)(1)(A) All victims shall be exempted from the payment of expenses incurred as a result of receiving a medical-legal examination provided the victim must receive the medical-legal examination within seventy-two (72) hours of the attack.

(B) However, the seventy-two-hour time limitation may be waived if the victim is a minor or if the Crime Victims Reparations Board finds that good cause exists for the failure to provide the exam within the required time.

(2)(A) This subsection does not require a victim of sexual assault to participate in the criminal justice system or to cooperate with law enforcement in order to be provided with a forensic medical exam or reimbursement for charges incurred on account of a forensic medical exam, or both.

(B) Subdivision (b)(2)(A) of this section does not preclude a report of suspected abuse or neglect as permitted or required by the Child Maltreatment Act, § 12-18-101 et seq.

(c)(1) A medical facility or licensed health care provider that performs a medical-legal examination shall submit a sexual assault reimbursement form, an itemized statement that meets the requirements of 45 C.F.R. § 164.512(d), as it existed on January 2, 2001, directly to the board for payment.

(2) The medical facility or licensed health care provider shall not submit any remaining balance after reimbursement by the board to the victim.

(3) Acceptance of payment of the expenses of the medical-legal examination by the board shall be considered payment in full and bars any legal action for collection.

History. Acts 1983, No. 403, §§ 4, 5; 1991, No. 396, § 8; 2001, No. 993, § 3; A.S.A. 1947, §§ 41-1823, 41-1824; Acts 2007, No. 676, § 4; 2009, No. 758, § 24.

A.C.R.C. Notes. Acts 2009, No. 758, § 29, provided: “Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.”

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Amendments. The 2007 amendment

redesignated former (b) as present (b)(1)(A); deleted “following conditions are met” following “provided the” in (b)(1)(A); deleted former (b)(1); deleted the former (b)(2)(A) designation; added present (b)(2); and made minor punctuation and stylistic changes.

The 2009 amendment substituted “Child Maltreatment Act, § 12-18-101 et seq.” for “Arkansas Child Maltreatment Act, § 12-12-501 et seq.” in (b)(2)(B).

CASE NOTES

Cited: *Griswold v. State*, 290 Ark. 79, 716 S.W.2d 767 (1986).

12-12-404. Reimbursement of medical facility — Rules and regulations.

(a) The Crime Victims Reparations Board may reimburse any medical facility or licensed health care provider that provides the services outlined in this subchapter for the reasonable cost for such services.

(b) The board is empowered to prescribe minimum standards, rules, and regulations necessary to implement this subchapter. These shall include, but not be limited to, a cost ceiling for each claim and the determination of reasonable cost.

History. Acts 1983, No. 403, § 6; A.S.A. 1947, § 41-1825; Acts 1991, No. 396, § 1; 2001, No. 993, § 4.

12-12-405. License suspension or revocation.

Noncompliance with the provisions of this subchapter is grounds for licensure suspension or revocation pursuant to the provisions of § 20-9-215 or any other provisions governing the licensure of medical facilities or health care providers.

History. Acts 1991, No. 612, § 3; 2001, No. 993, § 5.

SUBCHAPTER 5 — CHILD ABUSE REPORTING

SECTION.

12-12-501 — 12-12-519. [Repealed.]

Publisher's Notes. Former subchapter 5, concerning the reporting of child abuse, was repealed by Acts 1991, No. 1208, § 17. The former subchapter

was derived from the following sources:

12-12-501. Acts 1975, No. 397, § 1; A.S.A. 1947, § 42-807n.

12-12-502. Acts 1975, No. 397, § 2; 1979, No. 624, § 1; 1981, No. 907, § 1; 1985, No. 1033, § 1; A.S.A. 1947, § 42-807.

12-12-503. Acts 1975, No. 397, § 11; 1985, No. 1033, § 4; A.S.A. 1947, § 42-816.

12-12-504. Acts 1975, No. 397, § 3; A.S.A. 1947, § 42-808; Acts 1988 (4th Ex. Sess.), No. 5, § 4; 1988 (4th Ex. Sess.), No. 15, § 4.

12-12-505. Acts 1975, No. 397, § 4; A.S.A. 1947, § 42-809.

12-12-506. Acts 1975, No. 397, § 5; A.S.A. 1947, § 42-810.

12-12-507. Acts 1975, No. 397, §§ 2, 7; 1979, No. 624, §§ 1, 2; 1981, No. 907, § 1; 1985, No. 407, §§ 1, 2; 1985, No. 1033, §§ 1, 2; A.S.A. 1947, §§ 42-807, 42-812; Acts 1989, No. 824, § 1.

12-12-508. Acts 1975, No. 397, § 8; 1979, No. 624, § 3; 1985, No. 1033, § 3; A.S.A. 1947, § 42-813; Acts 1987, No. 1036, §§ 1, 2.

12-12-509. Acts 1975, No. 397, § 6; A.S.A. 1947, § 42-811.

12-12-510. Acts 1975, No. 397, § 9; A.S.A. 1947, § 42-814; Acts 1987, No. 1036, § 3.

12-12-511. Acts 1975, No. 397, § 10; 1979, No. 75, § 1; A.S.A. 1947, § 42-815; Acts 1989, No. 421, § 1.

12-12-512. Acts 1975, No. 397, § 12; 1985, No. 425, § 1; 1985, No. 672, § 1; A.S.A. 1947, § 42-817.

12-12-513. Acts 1975, No. 397, § 12; 1985, No. 425, § 1; 1985, No. 672, § 1; A.S.A. 1947, § 42-817.

12-12-514. Acts 1975, No. 397, § 13; A.S.A. 1947, § 42-818; Acts 1989, No. 687, § 1.

12-12-515. Acts 1975, No. 397, § 13; 1979, No. 624, § 4; 1985, No. 1033, § 5; A.S.A. 1947, §§ 42-818, 42-819; Acts 1987, No. 1036, §§ 6, 7; 1989, No. 28, § 1.

12-12-516. Acts 1975, No. 397, § 13; A.S.A. 1947, § 42-818; Acts 1987, No. 1036, §§ 4, 5, 7; 1989, No. 863, § 1.

12-12-517. Acts 1975, No. 397, § 13; A.S.A. 1947, § 42-818.

12-12-501 — 12-12-519. [Repealed.]

A.C.R.C. Notes. Section 12-12-504 was amended by Acts 2009, No. 165, § 5, to clarify the culpable mental state required to commit the criminal offenses and to clarify the criminal offenses. However, § 12-12-504 was also specifically repealed by Acts 2009, No. 749, § 2.

Section 12-12-505 was amended by Acts 2009, No. 954, § 1, to amend the procedure for removing an offender's name from the statewide central registry for cases involving allegations of child maltreatment. However, § 12-12-505 was also specifically repealed by Acts 2009, No. 749, § 2, and a new section concerning removal of names from the Child Maltreatment Central Registry, § 12-18-908, was enacted by Acts 2009, No. 749, § 1. Section 12-18-908 includes similar provisions to the amendments to § 12-12-505 that were made by Acts 2009, No. 954, § 1.

Section 12-12-507 was amended by Acts 2009, No. 629, § 1, to expand the list of

mandated reporters of child maltreatment. However, § 12-12-507 was also specifically repealed by Acts 2009, No. 749, § 2, and a new section concerning mandated reporters of child maltreatment, § 12-18-402, was enacted by Acts 2009, No. 749, § 1. Section 12-18-402 was subsequently amended by Acts 2009, No. 1409, § 1, to include the amendments to § 12-12-507 that were made by Acts 2009, No. 629, § 1.

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 749, § 2. The subchapter was derived from the following sources:

12-12-501. Acts 1991, No. 1208, § 1; 2001, No. 1210, § 1; 2003, No. 758, § 1.

12-12-502. Acts 1991, No. 1208, § 14; 1997, No. 1234, § 1.

12-12-503. Acts 1991, No. 1208, § 2; 1993, No. 1126, §§ 3-5; 1995, No. 804, § 2; 1995, No. 1341, §§ 1-3; 1997, No. 1334, § 1; 1999, No. 36, § 1; 1999, No. 1340, §§ 22-25, 34, 36; 2001, No. 1210, § 2; 2003, No. 175, § 1; 2003, No. 758, § 2;

2005, No. 1176, § 2; 2005, No. 1706, § 1; 2007, No. 284, § 1; 2007, No. 586, § 1.

12-12-504. Acts 1991, No. 1208, § 12; 1995, No. 1341, § 4; 1997, No. 1351, § 1; 2007, No. 586, § 2.

12-12-505. Acts 1991, No. 1208, §§ 8, 9; 1993, No. 1088, § 1; 1995, No. 1341, § 5; 1997, No. 1334, § 2; 2001, No. 1210, § 3; 2001, No. 1434, § 1; 2003, No. 758, §§ 3, 4; 2005, No. 1706, § 2.

12-12-506. Acts 1991, No. 1208, § 9; 1992 (1st Ex. Sess.), No. 49, § 2; 1995, No. 1341, § 6; 1997, No. 1334, § 3; 1999, No. 1222, §§ 4, 5; 1999, No. 1340, §§ 26, 27; 2001, No. 1210, § 4; 2003, No. 758, §§ 5, 6; 2005, No. 1706, §§ 3-5; 2007, No. 586, § 3.

12-12-507. Acts 1991, No. 1208, §§ 3, 4; 1993, No. 1126, § 6; 1995, No. 1341, §§ 7, 8; 1999, No. 214, § 1; 2001, No. 1210, § 5; 2001, No. 1236, § 1; 2003, No. 758, §§ 7-9; 2003, No. 1039, § 1; 2005, No. 912, § 1; 2005, No. 1176, § 5; 2005, No. 1706, §§ 6-8; 2007, No. 284, § 2; 2007, No. 586, §§ 4, 5; 2007, No. 703, §§ 9, 10, 11.

12-12-508. Acts 1991, No. 1208, § 3; 1997, No. 535, § 1; 1999, No. 1340, § 28; 2001, No. 1210, § 6; 2007, No. 586, § 6.

12-12-509. Acts 1991, No. 1208, § 4; 1995, No. 1341, § 9; 1997, No. 535, § 2; 1997, No. 1334, § 4; 1999, No. 626, § 1; 2001, No. 1210, § 7; 2003, No. 175, § 2; 2003, No. 758, § 10; 2005, No. 1466, § 5; 2005, No. 1706, §§ 9, 10; 2007, No. 284, § 3; 2007, No. 586, § 7.

12-12-510. Acts 1991, No. 1208, § 4; 1993, No. 1126, § 7; 1997, No. 1334, § 5; 1999, No. 1340, § 29; 2003, No. 758, §§ 11, 12; 2005, No. 1706, §§ 11, 12; 2007, No. 586, § 8.

12-12-511. Acts 1991, No. 1208, § 4; 1995, No. 1341, § 10; 1997, No. 1334, § 6; 2001, No. 1210, § 8.

12-12-512. Acts 1991, No. 1208, §§ 5, 7; 1993, No. 1126, § 8; 1995, No. 804, § 3; 1995, No. 1341, § 11; 1997, No. 1334, § 7; 1999, No. 1340, § 30; 2001, No. 1210, § 9; 2003, No. 758, §§ 13, 14; 2005, No. 132, § 1; 2005, No. 172, §§ 1, 2; 2005, No. 1706, § 13; 2007, No. 161, §§ 1, 2; 2007, No. 284, § 4; 2007, No. 586, § 9.

12-12-513. Acts 1991, No. 1208, § 7; 2001, No. 1210, § 10.

12-12-514. Acts 1991, No. 1208, § 6; 1995, No. 1341, § 12; 1997, No. 1334, § 8; 2001, No. 1210, § 11; 2003, No. 758, § 15.

12-12-515. Acts 1991, No. 1208, § 9; 1992 (1st Ex. Sess.), No. 49, § 1; 1995, No. 1341, § 13; 1997, No. 1334, § 9; 2001, No. 1210, § 12; 2003, No. 758, § 16.

12-12-516. Acts 1991, No. 1208, § 10; 1999, No. 1340, § 31; 2001, No. 1210, § 13; 2003, No. 758, § 17; 2003, No. 1166, § 32; 2005, No. 1706, § 14; 2007, No. 586, § 10; 2007, No. 703, § 12.

12-12-517. Acts 1991, No. 1208, § 11; 2005, No. 1706, § 15.

12-12-518. Acts 1991, No. 1208, § 13; 2001, No. 1210, § 14; 2003, No. 1039, § 2.

12-12-519. Acts 2001, No. 1210, § 15.

For current law, see the Child Maltreatment Act, § 12-18-101 et seq.

SUBCHAPTER 6 — KNIFE AND GUNSHOT WOUND REPORTING

SECTION.

12-12-601. Penalty.

12-12-602. Report of treatment required.

SECTION.

12-12-603. Contents and time of report.

Effective Dates. Acts 1949, No. 258, § 4: approved Mar. 8, 1949. Emergency clause provided: "It having been ascertained that immediate report of knife and gunshot injury would curtail crime and assist peace officers in performance of

their duties, and being necessary for the health, peace, and safety of the public, an emergency is hereby declared, and this act shall be in full force and effect from and after its passage."

12-12-601. Penalty.

Any person violating any provision of this subchapter shall be guilty of a violation and shall be fined in any amount not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

History. Acts 1949, No. 258, § 3; A.S.A. 1947, § 42-503; Acts 2005, No. 1994, § 76. **Amendments.** The 2005 amendment substituted "violation" for "misdemeanor."

12-12-602. Report of treatment required.

(a) All physicians, surgeons, hospitals, druggists, or other persons or entities that render first aid treatment shall report to the office of the county sheriff of the county all cases of knife or gunshot wounds treated by them or received in the hospital when the wounds appear to have been intentionally inflicted.

(b) If within a city of the first class, a report to the chief of police or a regular member of the police force shall be equivalent to a report to the office of the county sheriff, and a proper report to the chief of police, regular member of the police force, or office of the county sheriff shall be compliance with the requirements of this subchapter.

History. Acts 1949, No. 258, § 1; A.S.A. 1947, § 42-501; Acts 2005, No. 1962, § 33.

Amendments. The 2005 amendment, in (a), deleted "whether public or private, and all" preceding "druggists," substituted "persons or entities" for "persons," and "render" for "might be called upon to

render," inserted "to the office of the sheriff of the county," substituted "when the" for "which" and deleted "to the office of the sheriff of the county or to one of his or her regular commissioned deputies" at the end.

CASE NOTES

Cited: Baker v. State, 276 Ark. 193, 637 S.W.2d 522 (1982).

12-12-603. Contents and time of report.

(a) The report shall be made immediately upon the nature of the injury being ascertained, shall be by telephone if possible and practicable, otherwise by writing, and shall contain the name, age, sex, race, and location of the person so injured, together with names of persons bringing the patient in for treatment, if any.

(b) A written report under this subchapter shall not be in compliance unless speedier means of transmitting the notice are not available, are impractical, or are incapable of reaching an officer.

History. Acts 1949, No. 258, § 2; A.S.A. 1947, § 42-502.

SUBCHAPTER 7 — PSYCHOLOGICAL STRESS TESTS

SECTION.

12-12-701. Authorization.

12-12-702. Warnings.

SECTION.

12-12-703. Minors.

12-12-704. Results inadmissible.

Effective Dates. Acts 1975, No. 342, § 5: became law without Governor's signature, Mar. 10, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing law regulating the use and operation of devices or instruments designed to test or question individuals for the purpose of verifying the truth of statement is unduly restrictive and works a great hardship on the law enforcement agencies of

this state; that the immediate passage of this act is necessary to promote and encourage the more efficient enforcement of the criminal laws of this State; therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

12-12-701. Authorization.

Notwithstanding the provisions of § 17-39-101 et seq., all law enforcement agencies in this state are authorized to use a psychological stress evaluation instrument to test or question individuals for the purpose of determining and verifying the truth of statements.

History. Acts 1975, No. 342, § 1; A.S.A. 1947, § 42-901.

CASE NOTES

Admissibility as Evidence.

Testimony of unlicensed state police employee administering polygraph test held

inadmissible. *Holcomb v. State*, 268 Ark. 138, 594 S.W.2d 22 (1980).

12-12-702. Warnings.

Prior to administering any psychological evaluation tests, the person to whom the test is administered must be warned prior to any questioning that:

- (1) He or she has a right to remain silent;
- (2) Anything he or she says can be used against him in a court of law;
- (3) He or she has the right to the presence of an attorney; and
- (4) If he or she cannot afford an attorney, one may be appointed for him or her prior to his or her questioning if he or she so desires.

History. Acts 1975, No. 342, § 2; A.S.A. 1947, § 42-902.

12-12-703. Minors.

No psychological stress evaluation shall be given to any person under eighteen (18) years of age without first having received written authorization from the parent or guardian of the individual.

History. Acts 1975, No. 342, § 4; A.S.A. 1947, § 42-904.

CASE NOTES

Cited: *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996).

12-12-704. Results inadmissible.

The results of any such examination as provided in this subchapter shall be inadmissible in all courts in this state.

History. Acts 1975, No. 342, § 3; A.S.A. 1947, § 42-903.

CASE NOTES**ANALYSIS**

Opinion Testimony.

Reference to Polygraph Test.

Stipulation by Parties.

Opinion Testimony.

Long-standing rule prohibiting the admission of polygraph results properly applied where, had the trial judge allowed polygraph expert to offer his opinion that the defendant's answers were not deceptive, the state would have offered the opinion of detective that the defendant's answers were deceptive, and this would have created the very situation which the legislature and the courts have sought to avoid: the likelihood of credibility determinations being made by reference to the unreliable results of a polygraph examination. *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996).

Reference to Polygraph Test.

Any reference at trial to a polygraph test, in the absence of an agreement or other justifiable circumstances, ordinarily constitutes prejudicial error. *Hayes v. State*, 298 Ark. 356, 767 S.W.2d 525 (1989).

While neither the results of a lie detector examination nor testimony that indirectly or inferentially apprises a jury of

the results of a lie detector examination are admissible, the fact that the jury is apprised that a lie detector test was taken is not necessarily prejudicial if no inference as to the result is raised or if any inferences that might be raised as to the result are not prejudicial. *Wingfield v. State*, 303 Ark. 291, 796 S.W.2d 574 (1990).

A witness's veracity can not be bolstered or discredited by proof of his taking or refusing a lie detector test, and evidence of a witness's willingness or reluctance to be examined is also prejudicial and inadmissible to prove consciousness of innocence or of guilt. *Wingfield v. State*, 303 Ark. 291, 796 S.W.2d 574 (1990).

The district court's finding that there was no agreement between defendant's counsel and the prosecutor that a polygraph test result would be admissible was not clearly erroneous; having failed to obtain an oral agreement from the prosecutor, defendant's counsel cannot be criticized for failing to reduce that agreement to writing, and without an agreement of any kind, the polygraph test results were clearly inadmissible. *Houston v. Lockhart*, 9 F.3d 62 (8th Cir. 1993).

Trial court properly denied defendant's motion for mistrial after a witness mentioned defendant's having missed an ap-

pointment for a polygraph exam; the appellate court held that defendant had not met his burden of showing the jury was prejudiced by the referral to the missed polygraph exam and, even if prejudice could be presumed, any error caused was harmless in view of the overwhelming evidence of defendant's guilt. *Peters v. State*, 357 Ark. 297, 166 S.W.3d 34 (2004).

In a rape case, although the prohibition on the introduction of polygraph results in this section extended to the willingness or reluctance to be examined as evidence of consciousness of innocence or guilt, the state was not prohibited from introducing a redacted portion of an interview where defendant discussed taking the test; moreover, there was no requirement that the entire statement should have been admitted under Arkansas case law or Ark. R. Evid. 106. *Rollins v. State*, 362 Ark. 279, 208 S.W.3d 215 (2005).

Motion for a mistrial was properly denied based on a reference to a polygraph test as the state did not elicit the comment about the polygraph, and nothing indicated what the results were. *Johnson v. State*, 366 Ark. 8, 233 S.W.3d 123 (2006).

Stipulation by Parties.

The trial court properly excluded evidence of an accomplice's polygraph examination absent a written stipulation between the parties. *Foster v. State*, 285 Ark. 363, 687 S.W.2d 829 (1985).

Polygraph tests are admissible only if both parties agree in writing to the admission. *Houston v. Lockhart*, 958 F.2d 826 (8th Cir. 1992).

The prosecution was under no obligation to make a written stipulation agreeing to the admission of polygraph test results, regardless of any alleged oral agreement it may have made before the defendant took the tests. *Houston v. Lockhart*, 958 F.2d 826 (8th Cir. 1992).

The Arkansas Supreme Court has not interpreted this section literally; rather, test results are admissible if both parties enter into a written stipulation agreeing on their admissibility. *Houston v. Lockhart*, 982 F.2d 1246 (8th Cir. 1993).

An oral agreement to admit polygraph test results would be unenforceable. *Houston v. Lockhart*, 982 F.2d 1246 (8th Cir. 1993).

Cited: *Cogburn v. State*, 292 Ark. 564, 732 S.W.2d 807 (1987).

SUBCHAPTER 8 — MISSING CHILDREN

SECTION.

12-12-801. Report of missing child — Notation on records.

12-12-802. Request for birth certificate — Notification of law enforcement officer or Attorney General.

SECTION.

12-12-803. Request for school records — Notification of law enforcement officer or Attorney General.

12-12-801. Report of missing child — Notation on records.

(a) When either a law enforcement officer or the Attorney General is notified by the parents, guardian, or other person having custody of a child that the child is missing, the law enforcement officer or the Attorney General shall, within five (5) business days after being so notified, inform by certified mail, return receipt requested, the Division of Vital Records of the Department of Health and the superintendent of the school where the child was attending that the child has been reported as missing.

(b) The division shall enter on or attach to the child's birth certificate a notice that the child has been reported missing. The school shall make or attach the same notation on the child's school records.

History. Acts 1987, No. 164, § 1; 1993, No. 116, § 1.

12-12-802. Request for birth certificate — Notification of law enforcement officer or Attorney General.

(a) When the Division of Vital Records of the Department of Health receives a request for the birth certificate of a child who has been reported missing pursuant to this subchapter, the division shall within five (5) business days after receipt of the inquiry notify the law enforcement officer or the Attorney General, whoever initiated the report to the division, and furnish the name, address, and telephone number, if known, of the person making the inquiry.

(b) The notice to the law enforcement officer or the Attorney General shall be by certified mail, return receipt requested.

History. Acts 1987, No. 164, § 1; 1993, No. 116, § 2.

12-12-803. Request for school records — Notification of law enforcement officer or Attorney General.

(a) When a school receives a request for the records of a child who has been reported missing, the school shall, within five (5) business days, excluding days when the school is closed, after receipt of the inquiry, notify the law enforcement officer or the Attorney General and furnish the name, address, and telephone number, if known, of the person making the inquiry.

(b) The notice shall be by certified mail, return receipt requested.

History. Acts 1987, No. 164, § 1; 1993, No. 116, § 3.

SUBCHAPTER 9 — SEX OFFENDER REGISTRATION ACT OF 1997

SECTION.

- 12-12-901. Title.
- 12-12-902. Legislative findings.
- 12-12-903. Definitions.
- 12-12-904. Failure to comply with registration and reporting requirements — Refusal to cooperate with assessment process.
- 12-12-905. Applicability.
- 12-12-906. Duty to register or verify registration generally — Review of requirements with offenders.
- 12-12-907. Report to Arkansas Crime Information Center — Report to law enforcement agency.

SECTION.

- 12-12-908. Registration format — Requirements.
- 12-12-909. Verification form — Change of address.
- 12-12-910. Fine.
- 12-12-911. Sex and Child Offenders Registration Fund.
- 12-12-912. Arrests for violations.
- 12-12-913. Disclosure.
- 12-12-914. Notice of release.
- 12-12-915. Authority — Rules.
- 12-12-916. Publication and notice of obligation to register.
- 12-12-917. Evaluation protocol — Sexually violent predators — Juveniles adjudicated delinquent — Examiners.

SECTION.

- 12-12-918. Classification as sexually violent predator.
- 12-12-919. Termination of obligation to register.
- 12-12-920. Immunity from civil liability.
- 12-12-921. Sex Offender Assessment Committee.

SECTION.

- 12-12-922. Alternative procedure for sexually violent predator evaluations.
- 12-12-923. Electronic monitoring of sex offenders.

Publisher's Notes. Former subchapter 9, concerning the Habitual Child Sex Offender Registration Act, was repealed by Acts 1997, No. 989, § 23. The former subchapter was derived from the following sources:

- 12-12-901. Acts 1987, No. 587, § 1.
- 12-12-902. Acts 1987, No. 587, § 2.
- 12-12-903. Acts 1987, No. 587, § 10.
- 12-12-904. Acts 1987, No. 587, §§ 3, 6.
- 12-12-905. Acts 1987, No. 587, §§ 4, 5.
- 12-12-906. Acts 1987, No. 587, § 7.
- 12-12-907. Acts 1987, No. 587, § 8.
- 12-12-908. Acts 1987, No. 587, § 7.
- 12-12-909. Acts 1987, No. 587, § 9.

Cross References. Assistance to victims and witnesses of crimes, and victims of crimes case coordinators, § 16-21-106.

Effective Dates. Acts 1999, No. 1353, § 20: July 1, 1999, and Sept. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the need to register sex or child offenders or sexually violent predators is necessary to ensure the safety of the citizens of Arkansas. Currently, some sex or child offenders or sexually violent predators do not fall within the provisions of the current law and are therefore not required to be registered. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on September 1, 1999. Section 15 and Section 17 of this act shall become effective on July 1, 1999."

Acts 2006 (1st Ex. Sess.), No. 4, § 11: Apr. 7, 2006. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the need to register sex offenders and update the registration files of sex offenders is necessary to ensure the safety of the

citizens of the State of Arkansas; that the provisions of this act will improve the process of registering sex offenders and updating the registration files of sex offenders; and that this act is immediately necessary because of the public risk posed by sex offenders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 394, § 11: Mar. 21, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the need to register and verify registration of sex offenders and sexually violent predators is necessary to ensure the safety of the citizens of the State of Arkansas; that the provisions of this act will improve the process of registering and verifying the registration of sex offenders and sexually violent predators; and that this act is necessary because of the public risk posed by sex offenders and sexually violent predators. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-12-901. Title.

This subchapter shall be known and may be cited as the “Sex Offender Registration Act of 1997”.

History. Acts 1997, No. 989, § 1; 2001, No. 1743, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency Management, 24 U. Ark. Little Rock L. Rev. 501.

CASE NOTES**ANALYSIS**

Constitutionality.
In General.
Applicability.

Constitutionality.

The Sex and Child Offender Registration Act of 1997, §§ 12-12-901 — 12-12-920, is essentially regulatory and non-punitive in nature; therefore, it cannot be considered a violation of the ex post facto clauses of the United States or Arkansas Constitutions. *Kellar v. Fayetteville Police Dep’t*, 339 Ark. 274, 5 S.W.3d 402 (1999).

In General.

Where defendant was convicted of a sex offense and registered as a sex offender in another state, and while living in Arkansas for five years he was convicted of breaking and entering and felony theft of property and was given suspended sentences, but all the while he failed to register as a sex offender as required by § 12-12-905(a)(2) of the Sex Offender Registration Act, § 12-12-901 et seq., his failure to register or report a change of address was a Class D felony, and the state met its burden of proving by a preponderance of the evidence that defendant violated a condition of his suspended sentences. *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002).

Reduction of sex offender’s risk assessment was appropriate pursuant to the Sex Offender Registration Act of 1997, § 12-12-901 et seq., because defendant’s answers during his assessment interview appeared to have been consistent with documents assembled for the interview; additionally, no incidents were cited where defendant’s answers differed from documents assembled for the interview. *Ark. Dep’t of Corr. Sex Offender Screening & Risk Assessment v. Claybaugh*, 93 Ark. App. 11, 216 S.W.3d 134 (2005).

Applicability.

Sentencing court had authority to order the registration of a defendant as a sexual offender because the defendant’s crime of public sexual indecency was classified as a sexual offense, under § 5-14-111, and because § 12-12-903(12)(B)(ii) did not restrict the sentencing court’s authority to order registration for a person’s conviction as a sex offender for a sexual offense neither enumerated in § 12-12-903(12)(A)(i) nor included under the provisions of § 12-12-903(12)(B)(ii). *Fountain v. State*, 103 Ark. App. 15, 285 S.W.3d 706 (2008).

Cited: *Buffington v. State*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 71 (Jan. 31, 2008).

RESEARCH REFERENCES

Ark. L. Rev. Loe, Arkansas Sexual Offender Registration and Notification Laws: An Ex Post Facto Violation? Ark.

Code Ann. §§ 12-12-901 — 12-12-920 and *Snyder v. State of Arkansas*, 53 Ark. L. Rev. 175.

12-12-902. Legislative findings.

The General Assembly finds that sex offenders pose a high risk of reoffending after release from custody, that protecting the public from sex offenders is a primary governmental interest, that the privacy interest of persons adjudicated guilty of sex offenses is less important than the government's interest in public safety, and that the release of certain information about sex offenders to criminal justice agencies and the general public will assist in protecting the public safety.

History. Acts 1997, No. 989, § 2.

CASE NOTES**Constitutionality.**

Assessment requirement for one who is acquitted of a sex offense by reason of mental disease or defect is rationally related to the State's high and legitimate interest in protecting society from repeat sex offenders. Ark. Dep't of Corr. v. Bailey, 368 Ark. 518, 247 S.W.3d 851 (2007).

Cited: Ark. Dep't of Corr. Sex Offender Screening & Risk Assessment v. Claybaugh, 93 Ark. App. 11, 216 S.W.3d 134 (2005); Weems v. Little Rock Police Dep't, 453 F.3d 1010 (8th Cir. 2006).

12-12-903. Definitions.

As used in this subchapter:

(1) "Adjudication of guilt" or other words of similar import mean a:

- (A) Plea of guilty;
- (B) Plea of nolo contendere;
- (C) Negotiated plea;
- (D) Finding of guilt by a judge; or
- (E) Finding of guilt by a jury;

(2)(A) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(B) "Administration of criminal justice" also includes criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(3) "Aggravated sex offense" means an offense in the Arkansas Code substantially equivalent to "aggravated sexual abuse" as defined in 18 U.S.C. § 2241 as it existed on March 1, 2003, which principally encompasses:

(A) Causing another person to engage in a sexual act:

(i) By using force against that other person; or

(ii) By threatening or placing or attempting to threaten or place that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

(B) Knowingly:

(i) Rendering another person unconscious and then engaging in a sexual act with that other person; or

(ii) Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or similar substance and thereby:

(a) Substantially impairing the ability of that other person to appraise or control conduct; and

(b) Engaging or attempting to engage in a sexual act with that other person; or

(C) Crossing a state line with intent to:

(i) Engage or attempt to engage in a sexual act with a person who has not attained twelve (12) years of age;

(ii) Knowingly engage or attempt to engage in a sexual act with another person who has not attained twelve (12) years of age; or

(iii) Knowingly engage or attempt to engage in a sexual act under the circumstances described in subdivisions (3)(A) and (B) of this section with another person who has attained twelve (12) years of age but has not attained sixteen (16) years of age and is at least four (4) years younger than the alleged offender;

(4) "Change of address" or other words of similar import mean a change of residence or a change for more than thirty (30) days of temporary domicile, change of location of employment, education or training, or any other change that alters where a sex offender regularly spends a substantial amount of time;

(5) "Criminal justice agency" means a government agency or any subunit thereof which is authorized by law to perform the administration of criminal justice and which allocates more than one-half (½) of its annual budget to the administration of criminal justice;

(6) "Local law enforcement agency having jurisdiction" means the:

(A) Chief law enforcement officer of the municipality in which a sex offender:

(i) Resides or expects to reside;

(ii) Is employed; or

(iii) Is attending an institution of training or education; or

(B) County sheriff, if:

(i) The municipality does not have a chief law enforcement officer; or

(ii) A sex offender resides or expects to reside, is employed, or is attending an institution of training or education in an unincorporated area of a county;

(7) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminally sexual acts to a degree that makes the person a menace to the health and safety of other persons;

(8) "Personality disorder" means an enduring pattern of inner experience and behavior that:

(A) Deviates markedly from the expectation of the person's culture;

(B) Is pervasive and inflexible across a broad range of personal and social situations;

(C) Leads to clinically significant distress or impairment in social, occupational, or other important areas of functioning;

(D) Is stable over time;

(E) Has its onset in adolescence or early adulthood;

(F) Is not better accounted for as a manifestation or consequence of another mental disorder; and

(G) Is not due to the direct physiological effects of a substance or a general medical condition;

(9) "Predatory" describes an act directed at a stranger or a person with whom a relationship has been established or promoted for the primary purpose of victimization of that person or individuals over whom that person has control;

(10)(A) "Residency" means the place where a person lives notwithstanding that there may be an intent to move or return at some future date to another place.

(B) "Residency" also includes place of employment, training, or education;

(11) "Sentencing court" means the judge of the court that sentenced the sex offender for the sex offense;

(12)(A) "Sex offense" includes, but is not limited to:

(i) The following offenses:

(a) Rape, § 5-14-103;

(b) Sexual indecency with a child, § 5-14-110;

(c) Sexual assault in the first degree, § 5-14-124;

(d) Sexual assault in the second degree, § 5-14-125;

(e) Sexual assault in the third degree, § 5-14-126;

(f) Sexual assault in the fourth degree, § 5-14-127;

(g) Incest, § 5-26-202;

(h) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(i) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(j) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;

(k) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;

(l) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(m) Promoting prostitution in the first degree, § 5-70-104;

(n) Stalking when ordered by the sentencing court to register as a sex offender, § 5-71-229;

(o) Indecent exposure, § 5-14-112, if a felony level offense;

(p) Exposing another person to human immunodeficiency virus, § 5-14-123, when ordered by the sentencing court to register as a sex offender;

(q) Kidnapping pursuant to § 5-11-102(a) when the victim is a minor and the offender is not the parent of the victim;

(r) False imprisonment in the first degree and false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when the victim is a minor and the offender is not the parent of the victim;

(s) Permitting abuse of a minor, § 5-27-221;

(t) Computer child pornography, § 5-27-603;

(u) Computer exploitation of a child, § 5-27-605;

(v) Permanent detention or restraint, § 5-11-106, when the offender is not the parent of the victim;

(w) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child, § 5-27-602;

(x) Internet stalking of a child, § 5-27-306;

(y) Crime of video voyeurism, § 5-16-101, if a felony level offense;

(z) Voyeurism, § 5-16-102, if a felony level offense; and

(aa) Any felony-homicide offense under § 5-10-101, § 5-10-102, or § 5-10-104 if the underlying felony is an offense listed in this subdivision (12)(A)(i);

(ii) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in subdivision (12)(A)(i) of this section;

(iii) An adjudication of guilt for an offense of the law of another state, for a federal offense, for a tribal court offense, or for a military offense:

(a) Which is similar to any of the offenses enumerated in subdivision (12)(A)(i) of this section; or

(b) When that adjudication of guilt requires registration under another state's sex offender registration laws; or

(iv) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (12)(A).

(B)(i) The sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense even though the offense is not enumerated in subdivision (12)(A)(i) of this section.

(ii) This authority applies to sex offenses enacted, renamed, or amended at a later date by the General Assembly unless the General Assembly expresses its intent not to consider the offense to be a true sex offense for the purposes of this subchapter;

(13)(A) "Sex offender" means a person who is adjudicated guilty of a sex offense or acquitted on the grounds of mental disease or defect of a sex offense.

(B) Unless otherwise specified, "sex offender" includes those individuals classified by the court as "sexually violent predators";

(14) "Sexually violent offense" means any state, federal, tribal, or military offense which includes a sexual act as defined in 18 U.S.C. §§ 2241 and 2242 as they existed on March 1, 2003, with another person if the offense is nonconsensual regardless of the age of the victim; and

(15) "Sexually violent predator" means a person who has been adjudicated guilty or acquitted on the grounds of mental disease or

defect of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

History. Acts 1997, No. 989, § 3; 1999, No. 1353, § 1; 2001, No. 1496, § 3; 2001, No. 1743, § 2; 2003, No. 1390, § 4; 2003 (2nd Ex. Sess.), No. 21, §§ 1-3; 2007, No. 210, § 1; 2007, No. 394, § 2; 2009, No. 165, § 6.

Amendments. The 2007 amendment by No. 210 inserted (12)(A)(i)(cc), and made related changes.

The 2007 amendment by No. 394, in (12)(A), deleted “for the purposes of this subchapter” following “Sex offense” in the

introductory paragraph, and inserted (i)(z), (aa), and (bb).

The 2009 amendment, in (12)(A)(i), deleted “in the first degree” at the end of (u), deleted (x), which read: “Computer child pornography, § 5-27-603,” deleted (y), which read: “Computer exploitation of a child, § 5-27-605,” redesignated the remaining subdivisions accordingly, and substituted “this subdivision (12)(A)(i)” for “subdivisions (12)(A)(i)(a)-(y) of this section” in (aa).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Criminal Law, 24 U. Ark. Little Rock L. Rev. 429.

Survey of Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency Management, 24 U. Ark. Little Rock L. Rev. 501.

CASE NOTES

ANALYSIS

Applicability.
Adjudication of Guilt.
Construction With Other Law.
Illustrative Cases.

Applicability.

Sentencing court had authority to order the registration of a defendant as a sexual offender because the defendant’s crime of public sexual indecency was classified as a sexual offense, under § 5-14-111, and because subdivision (12)(B)(ii) of this section did not restrict the sentencing court’s authority to order registration for a person’s conviction as a sex offender for a sexual offense neither enumerated in subdivision (12)(A)(i) of this section nor included under the provisions of subdivision (12)(B)(ii). *Fountain v. State*, 103 Ark. App. 15, 285 S.W.3d 706 (2008).

Giving effect to subdivisions (12)(A) and (12)(B) of this section, subdivision (12)(B)(ii) does not restrict a sentencing court’s authority to order registration for a person’s conviction as a sex offender for a sexual offense neither enumerated in subdivision (12)(A)(i) nor included under the provisions of subdivision (12)(B)(ii).

Fountain v. State, 103 Ark. App. 15, 285 S.W.3d 706 (2008).

Adjudication of Guilt.

Defendant could not be certified as an habitual child sex offender since his prior juvenile delinquency adjudication could not be considered a prior conviction under the 1987 version of this subchapter. *Snyder v. State*, 332 Ark. 279, 965 S.W.2d 121 (1998).

Construction With Other Law.

Section § 12-12-909 requires sex offenders to report changes in employment 10 days before they occur and this section provides sex offenders with an affirmative defense if they notify authorities no later than five days after changing employment; reading the two statutes together makes it clear that a defendant must notify authorities 10 days prior to changing employment, absent an affirmative defense, and since the loss of employment constitutes a change, § 12-12-904 and this section do not allow a 30-day grace period for reporting a change in employment. *Mashburn v. State*, 87 Ark. App. 89, 189 S.W.3d 73 (2004).

Definition of “residency” for purposes of registration in this section appears in a

different chapter of the Arkansas Code than the residency restriction in § 5-14-128(a), and the definition does not by its terms apply to the criminal statute that makes it unlawful for a sex offender “to reside” within 2000 feet of a school or daycare facility. *Weems v. Little Rock Police Dep’t*, 453 F.3d 1010 (8th Cir. 2006), rehearing denied, *Weems v. Johnson*, — F.3d —, 2006 U.S. App. LEXIS 21238 (8th Cir. Aug. 18, 2006), cert. denied, *Weems v. Johnson*, 550 U.S. 917, 127 S. Ct. 2128, 167 L. Ed. 2d 862 (2007).

Petitioner’s motion to belated appeal from the dismissal of his habeas petition was denied because, when the trial court entered the second amended judgment to correctly add the requirement that petitioner register as a sex offender under subdivision (12)(A)(i)(d) of this section, his sexual assault sentence was not modified or increased; the registration and notification components of the Sex Offender Registration Act of 1997, §§ 12-12-901 — 12-12-923, were regulatory and not a form of

punishment. *Buffington v. State*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 71 (Jan. 31, 2008).

Illustrative Cases.

Where the Sex Offender Screening and Risk Assessment Committee found that appellant was convicted of two separate sexual assaults on two separate women, admitted that he had been involved in forced sex acts, could not stand rejection, thought about raping, and said that raping made him feel better, there was substantial evidence to support the Committee’s assessment of appellant as a level four offender. Because the Committee determined the presence of a mental abnormality or personality disorder by virtue of its review and assessment of appellant as a level four offender, the Committee complied with the provisions of this section. *Parkman v. Sex Offender Screening & Risk Assessment Comm.*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 308 (Apr. 16, 2009).

12-12-904. Failure to comply with registration and reporting requirements — Refusal to cooperate with assessment process.

(a)(1)(A) A person is guilty of a Class C felony who:

(i) Fails to register or verify registration as required under this subchapter;

(ii) Fails to report a change of address, employment, education, or training as required under this subchapter; or

(iii) Refuses to cooperate with the assessment process as required under this subchapter.

(B)(i) Upon conviction, a sex offender who fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2) is guilty of a Class C felony.

(ii) If a sex offender fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2), as soon as administratively feasible the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall contact the local law enforcement agency having jurisdiction to report the violation of subdivision (a)(1)(B)(i) of this section.

(2) It is an affirmative defense to prosecution if the person:

(A) Delayed reporting a change in address because of:

(i) An eviction;

(ii) A natural disaster; or

(iii) Any other unforeseen circumstance; and

(B) Provided the new address to the Arkansas Crime Information Center in writing no later than five (5) business days after the person establishes residency.

(b) Any agency or official subject to reporting requirements under this subchapter that knowingly fails to comply with the reporting requirements under this subchapter is guilty of a Class B misdemeanor.

History. Acts 1997, No. 989, § 11; 1999, No. 1353, § 2; 2001, No. 1743, § 3; 2006 (1st Ex. Sess.), No. 4, § 1; 2007, No. 394, § 3.

Amendments. The 2007 amendment, in (a), substituted “verify registration” for

“reregister” in (1)(A)(i), deleted (2)(B) and redesignated the remaining provisions, and made related changes.

Cross References. Fines, 5-4-201.
Imprisonment, 5-4-401.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency

Management, 24 U. Ark. Little Rock L. Rev. 501.

CASE NOTES

ANALYSIS

In General.
Construction With Other Law.
Interpretation.

In General.

Where defendant was convicted of a sex offense and registered as a sex offender in another state, and while living in Arkansas for five years he was convicted of breaking and entering and felony theft of property and was given suspended sentences, but all the while he failed to register as a sex offender as required by § 12-12-905(a)(2) of the Sex Offender Registration Act, § 12-12-901 et seq., his failure to register or report a change of address was a Class D felony, and the state met its burden of proving by a preponderance of the evidence that defendant violated a condition of his suspended sentences. *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002).

Defendant’s conviction under subdivision (a)(1) of this section was affirmed because defendant had previously been ordered to register as a sex offender in Louisiana, and his failure to do so in Arkansas was sufficient to support his conviction. *Flowers v. State*, 92 Ark. App. 337, 213 S.W.3d 648 (2005).

Because the failure to register as a sex

offender was a strict liability offense under § 12-12-901 et seq. and the state proved that defendant was required to register but failed to do so, the trial court did not err by denying defendant’s motion for a directed verdict. *Adkins v. State*, 371 Ark. 159, 264 S.W.3d 523 (2007).

Construction With Other Law.

Section § 12-12-909 requires sex offenders to report changes in employment 10 days before they occur and this section provides sex offenders with an affirmative defense if they notify authorities no later than five days after changing employment; reading the two statutes together makes it clear that a defendant must notify authorities 10 days prior to changing employment, absent an affirmative defense, and since the loss of employment constitutes a change, this section and § 12-12-903 do not allow a 30-day grace period for reporting a change in employment. *Mashburn v. State*, 87 Ark. App. 89, 189 S.W.3d 73 (2004).

Interpretation.

Sex Offender Screening and Risk Assessment Committee’s assessment as a sex offender as a level four offender based on convictions which occurred before the effective date of the Sex Offender Registration Act (SORA) did not violate the ex

post facto prohibitions of U.S. Const., Art. 1, § 10 and Ark. Const., Art. 2, § 17. Despite subdivision (a)(1) of this section, which sets forth criminal sanctions for a sex offender's failure to report, the SORA is not a form of punishment; therefore, the Supreme Court of Arkansas holds that it

cannot be considered a violation of the ex post facto clauses of the United States and Arkansas Constitutions. *Parkman v. Sex Offender Screening & Risk Assessment Comm.*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 308 (Apr. 16, 2009).

12-12-905. Applicability.

(a) The registration or registration verification requirements of this subchapter apply to a person who:

(1) Is adjudicated guilty on or after August 1, 1997, of a sex offense, aggravated sex offense, or sexually violent offense;

(2) Is serving a sentence of incarceration, probation, parole, or other form of community supervision as a result of an adjudication of guilt on or after August 1, 1997, for a sex offense, aggravated sex offense, or sexually violent offense;

(3) Is acquitted on or after August 1, 1997, on the grounds of mental disease or defect for a sex offense, aggravated sex offense, or sexually violent offense;

(4) Is serving a commitment as a result of an acquittal on or after August 1, 1997, on the grounds of mental disease or defect for a sex offense, aggravated sex offense, or sexually violent offense; or

(5) Was required to be registered under the Habitual Child Sex Offender Registration Act, former § 12-12-901 et seq.

(b) A person who has been adjudicated guilty of a sex offense and whose record of conviction will be expunged under the provisions of §§ 16-93-301 — 16-93-303 is not relieved of the duty to register or verify registration.

(c)(1) If the underlying conviction of the registrant is reversed, vacated, or set aside or if the registrant is pardoned, the registrant is relieved from the duty to register or verify registration.

(2) Registration or registration verification shall cease upon the receipt and verification by the Arkansas Crime Information Center of documentation from the:

(A) Court verifying the fact that the conviction has been reversed, vacated, or set aside; or

(B) Governor's office that the Governor has pardoned the registrant.

History. Acts 1997, No. 989, § 4; 1999, No. 1353, § 3; 2001, No. 1743, § 4; 2003, No. 1265, § 2; 2006 (1st Ex. Sess.), No. 4, § 2; 2007, No. 394, § 4.

A.C.R.C. Notes. The Habitual Child Sex Offender Registration Act, former § 12-12-901 et seq., referred to in subdivision (a)(5) of this section, was derived

from Acts 1987, No. 587, §§ 1-10, which was subsequently repealed by Acts 1997, No. 989, § 23.

Amendments. The 2007 amendment substituted "registration verification" for "reregistration" or "reregister" throughout the section.

CASE NOTES

In General.

Where defendant was convicted of a sex offense and registered as a sex offender in another state, and while living in Arkansas for five years he was convicted of breaking and entering and felony theft of property and was given suspended sentences, but all the while he failed to register as a sex offender as required by subdivision (a)(2) of this section in the Sex Offender Registration Act, § 12-12-901 et seq., his failure to register or report a change of address was a Class D felony, and the state met its burden of proving by a preponderance of the evidence that defendant violated a condition of his suspended sentences. *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002).

Sentencing court had authority to order the registration of a defendant as a sexual offender because the defendant had been adjudicated guilty of public sexual indecency, under § 5-14-111, on or after August 1, 1997, and because § 12-12-903(12)(B)(ii) ~ did not restrict the sentencing court's authority to order registration for a person's conviction as a sex offender for a sexual offense neither enumerated in § 12-12-903(12)(A)(i) nor included under the provisions of § 12-12-903(12)(B)(ii). *Fountain v. State*, 103 Ark. App. 15, 285 S.W.3d 706 (2008).

Cited: *Hammock v. State*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 572 (May 20, 2009).

12-12-906. Duty to register or verify registration generally — Review of requirements with offenders.

(a)(1)(A)(i) At the time of adjudication of guilt, the sentencing court shall enter on the judgment and commitment or judgment and disposition form that the offender is required to register as a sex offender and shall indicate whether the:

- (a) Offense is an aggravated sex offense;
 - (b) Sex offender has been adjudicated guilty of a prior sex offense under a separate case number; or
 - (c) Sex offender has been classified as a sexually violent predator.
- (ii) If the sentencing court finds the offender is required to register as a sex offender, then at the time of adjudication of guilt the sentencing court shall require the sex offender to complete the sex offender registration form prepared by the Director of the Arkansas Crime Information Center pursuant to § 12-12-908 and shall forward the completed sex offender registration form to the Arkansas Crime Information Center.

(B)(i) The Department of Correction shall ensure that a sex offender received for incarceration has completed the sex offender registration form.

(ii) If the Department of Correction cannot confirm that the sex offender has completed the sex offender registration form, the Department of Correction shall require the sex offender to complete the sex offender registration form upon intake, release, or discharge.

(C)(i) The Department of Community Correction shall ensure that a sex offender placed on probation or another form of community supervision has completed the sex offender registration form.

(ii) If the Department of Community Correction cannot confirm that the sex offender has completed the sex offender registration form, the Department of Community Correction shall require the sex

offender to complete the sex offender registration form upon intake, release, or discharge.

(D)(i) The Arkansas State Hospital shall ensure that the sex offender registration form has been completed for any sex offender found not guilty by reason of insanity and shall arrange an evaluation by Sex Offender Screening and Risk Assessment.

(ii) If the Arkansas State Hospital cannot confirm that the sex offender has completed the sex offender registration form, the Arkansas State Hospital shall ensure that the sex offender registration form is completed for the sex offender upon intake, release, or discharge.

(2)(A) A sex offender moving to or returning to this state from another jurisdiction shall register with the local law enforcement agency having jurisdiction within three (3) business days after the sex offender establishes residency in a municipality or county of this state.

(B)(i) Any person living in this state who would be required to register as a sex offender in the jurisdiction in which he or she was adjudicated guilty of a sex offense shall register as a sex offender in this state whether living, working, or attending school or other training in Arkansas.

(ii) A nonresident worker or student who enters the state shall register in compliance with Pub. L. No. 109-248, as it existed on January 1, 2007.

(C) A sex offender sentenced and required to register outside of Arkansas shall:

(i) Submit to assessment by Sex Offender Screening and Risk Assessment;

(ii) Provide a deoxyribonucleic acid (DNA) sample if a sample is not already accessible to the State Crime Laboratory; and

(iii) Pay the mandatory fee of two hundred fifty dollars (\$250) to be deposited into the DNA Detection Fund established by § 12-12-1119.

(b)(1) The registration file of a sex offender who is confined in a correctional facility or serving a commitment following acquittal on the grounds of mental disease or defect shall be inactive until the registration file is updated by the department responsible for supervision of the sex offender.

(2) Immediately prior to the release or discharge of a sex offender or immediately following a sex offender's escape or his or her absconding from supervision, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall update the registration file of the sex offender who is to be released or discharged or who has escaped or has absconded from supervision.

(c)(1)(A) When registering a sex offender as provided in subsection (a) of this section, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall:

(i) Inform the sex offender of the duty to submit to assessment and to register and obtain the information required for registration as described in § 12-12-908;

(ii) Inform the sex offender that if the sex offender changes residency within the state, the sex offender shall give the new address and place of employment, education, higher education, or training to the Arkansas Crime Information Center in writing no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address;

(iii)(a) Inform the sex offender that if the sex offender changes residency to another state or enters another state to work or attend school, the sex offender must also register in that state regardless of permanent residency.

(b) The sex offender shall register the new address and place of employment, education, higher education, or training with the center and with a designated law enforcement agency in the new state not later than three (3) business days after the sex offender establishes residence or is temporarily domiciled in the new state;

(iv) Obtain fingerprints and a photograph of the sex offender if these have not already been obtained in connection with the offense that triggered registration;

(v) Obtain a deoxyribonucleic acid (DNA) sample if one has not already been provided;

(vi) Require the sex offender to complete the entire registration process, including, but not limited to, requiring the sex offender to read and sign a form stating that the duty of the sex offender to register under this subchapter has been explained;

(vii) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the center in writing no later than three (3) business days after the sex offender establishes residency;

(viii) Inform a sex offender who has been granted probation that failure to comply with the provisions of this subchapter may be grounds for revocation of the sex offender's probation; and

(ix) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(a) Verify registration and obtain the information required for registration verification as described in subsections (g) and (h) of this section; and

(b) Ensure that the information required for reregistration verification under subsections (g) and (h) of this section is provided to the local law enforcement agency having jurisdiction.

(B)(i) Any offender required to register as a sex offender must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon registering if a sample has not already been provided to the State Crime Laboratory.

(ii) Any offender required to register as a sex offender who is entering the State of Arkansas must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon registration and must pay the mandatory fee of two hundred fifty dollars (\$250) to be deposited into the DNA Detection Fund established by § 12-12-1119.

(2) When updating the registration file of a sex offender, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall:

(A) Review with the sex offender the duty to register and obtain current information required for registration as described in § 12-12-908;

(B) Review with the sex offender the requirement that if the sex offender changes address within the state, the sex offender shall give the new address to the center in writing no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address;

(C) Review with the sex offender the requirement that if the sex offender changes address to another state, the sex offender shall register the new address with the center and with a designated law enforcement agency in the new state not later than three (3) business days after the sex offender establishes residence or is temporarily domiciled in the new state if the new state has a registration requirement;

(D) Require the sex offender to read and sign a form stating that the duty of the sex offender to register under this subchapter has been reviewed;

(E) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the center in writing no later than three (3) business days after the sex offender establishes residency;

(F) Review with the sex offender the consequences of failure to provide any information required by subdivision (b)(2) of this section;

(G) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(i) Verify registration and report the information required for registration verification as described in subsections (g) and (h) of this section; and

(ii) Ensure that the information required for registration verification under subsections (g) and (h) of this section is provided to the local law enforcement agency having jurisdiction; and

(H) Review with a sex offender subject to lifetime registration under § 12-12-919 the consequences of failure to verify registration under § 12-12-904.

(d) When registering or updating the registration file of a sexually violent predator, in addition to the requirements of subdivision (c)(1) or

(2) of this section, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall obtain documentation of any treatment received for the mental abnormality or personality disorder of the sexually violent predator.

(e) Any sex offender working, enrolled, or volunteering in a public or private elementary, secondary or postsecondary school, or institution of training shall notify the center of that status and shall register with the local law enforcement agency having jurisdiction over that campus.

(f)(1) An offender required to register pursuant to this subchapter shall not change his or her name unless the change is:

(A) Incident to a change in the marital status of the sex offender;

or

(B) Necessary to effect the exercise of the religion of the sex offender.

(2) The change in the sex offender's name shall be reported to the Director of the Arkansas Crime Information Center within ten (10) calendar days after the change in name.

(3) A violation of this subsection is a Class C felony.

(g)(1) Except as provided in subsection (h) of this section, beginning April 7, 2006, a sex offender subject to lifetime registration under § 12-12-919 shall report in person every six (6) months after registration to the local law enforcement agency having jurisdiction to verify registration.

(2) The local law enforcement agency having jurisdiction may determine the appropriate times and days for reporting by the sex offender, and the determination shall be consistent with the reporting requirements of subdivision (g)(1) of this section.

(3) Registration verification shall include reporting any change to the following information concerning the sex offender:

(A) Name;

(B) Social security number;

(C) Age;

(D) Race;

(E) Gender;

(F) Date of birth;

(G) Height;

(H) Weight;

(I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment;

(L) Vehicle make, model, color, and license tag number that the sex offender owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sex offender's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sex offender's fingerprints; and

(b) Submit the fingerprints to the center and to the Department of Arkansas State Police; and

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sex offender at each registration verification and submit the photograph to the center.

(4) If the sex offender is enrolled or employed at an institution of higher education in this state, the sex offender shall also report to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sex offender is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sex offender shall report the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sex offender is a vessel, live-aboard vessel, or houseboat, the sex offender shall report the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

(C) Name;

(D) Registration number; and

(E) A description, including color scheme.

(h)(1) Beginning on March 21, 2007, a sexually violent predator subject to lifetime registration under § 12-12-919 shall report in person every three (3) months after registration to the local law enforcement agency having jurisdiction to verify registration.

(2) The local law enforcement agency having jurisdiction may determine the appropriate times and days for reporting by the sexually violent predator, and the determination shall be consistent with the reporting requirements of subdivision (h)(1) of this section.

(3) Registration verification shall include reporting any change to the following information concerning the sexually violent predator:

(A) Name;

(B) Social security number;

(C) Age;

- (D) Race;
- (E) Gender;
- (F) Date of birth;
- (G) Height;
- (H) Weight;
- (I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment;

(L) Vehicle make, model, color, and license tag number that the sexually violent predator owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sexually violent predator's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sexually violent predator's fingerprints; and

(b) Submit the fingerprints to the center and to the Department of Arkansas State Police; and

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sexually violent predator at each registration verification and submit the photograph to the center.

(4) If the sexually violent predator is enrolled or employed at an institution of higher education in this state, the sexually violent predator shall also report to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sexually violent predator is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sexually violent predator shall report the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sexually violent predator is a vessel, live-aboard vessel, or houseboat, the sexually violent predator shall report the following information concerning the vessel, live-aboard vessel, or houseboat:

- (A) Hull identification number;
- (B) Manufacturer's serial number;
- (C) Name;
- (D) Registration number; and
- (E) A description, including color scheme.

(i) Within three (3) days after verifying the registration of a sex offender under subsection (g) of this section or a sexually violent predator under subsection (h) of this section, the local law enforcement agency having jurisdiction shall report by written or electronic means all information obtained from or provided by the sex offender or sexually violent predator to the center.

History. Acts 1997, No. 989, § 5; 1999, No. 1353, § 4; 2001, No. 202, §§ 1-3; 2001, No. 1089, § 1; 2001, No. 1743, § 5; 2003, No. 1185, § 18; 2003, No. 1265, § 4[3]; 2003 (2nd Ex. Sess.), No. 21, § 4; 2005, No. 1962, § 34; 2006 (1st Ex. Sess.), No. 4, § 3; 2007, No. 394, § 5.

A.C.R.C. Notes. Pursuant to § 1-2-207, the amendment of subdivision (a) by Acts 2001, No. 202, § 1 is deemed to be superseded by its amendment by Acts 2001, No. 1743, § 5. Acts 2001, No. 202, § 1 amended (a)(1) to read as follows: "(a)(1)(A) At the time of an offender's adjudication of guilt, the sentencing court shall require the offender to complete the sex offender registration form in the format prepared by the Director of the Arkansas Crime Information Center pursuant to § 12-12-908.

"(B)(1) For offenders who are sentenced to a term of incarceration in the Department of Correction, it shall be the responsibility of the Department of Correction to assure that those offenders complete the sex offender registration form.

"(2) For offenders who are adjudicated guilty but are not sentenced to a term of incarceration in the Department of Correction, it shall be the responsibility of the Department of Community Correction to assure that those offenders complete the sex offender registration form."

Acts 2003, No. 1265 did not contain a Section 3.

Amendments. The 2005 amendment substituted "42 U.S.C. § 14071 et seq. and 64 Fed. Reg. 572 et seq., as they existed on March 1, 2003" for "64 Fed. Reg. 585 2d as it existed on March 1, 2003" in (a)(2)(B)(ii).

The 2006 (1st Ex. Sess.) amendment rewrote this section.

The 2007 amendment substituted "verify registration" for "reregister" in the section heading; substituted "within three (3) business days" for "within ten (10) days" in (a)(2)(A); rewrote (a)(2)(B)(ii), (c)(1)(A) (c)(2), (g)(1), and (g)(3); added (h) and redesignated the remaining subsection accordingly; and rewrote (i).

Cross References. Fines, 5-4-201. Imprisonment, 5-4-401.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency Management, 24 U. Ark. Little Rock L. Rev. 501.

CASE NOTES

ANALYSIS

Construction With Other Law.
Requirement to Register.
Strict Liability Offense.

Construction With Other Law.

Petitioner's motion to belated appeal from the dismissal of his habeas petition was denied because when the trial court entered the second amended judgment to

correctly add the requirement that petitioner register as a sex offender under § 12-12-903(12)(A)(i)(d), as it was required to do, his sexual assault sentence was not modified or increased; the registration and notification components of the Sex Offender Registration Act of 1997, §§ 12-12-901 — 12-12-923, were regulatory and not a form of punishment. *Buffington v. State*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 71 (Jan. 31, 2008).

Requirement to Register.

Defendant's conviction in the state of Washington required that he register as a sex offender, therefore, under subdivision

(a)(2)(B)(i) of this section, he was also required to register as a sex offender in Arkansas. *Hammock v. State*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 572 (May 20, 2009).

Strict Liability Offense.

Because the failure to register as a sex offender was a strict liability offense under § 12-12-901 et seq. and the state proved that defendant was required to register but failed to do so, the trial court did not err by denying defendant's motion for a directed verdict. *Adkins v. State*, 371 Ark. 159, 264 S.W.3d 523 (2007).

12-12-907. Report to Arkansas Crime Information Center — Report to law enforcement agency.

(a)(1) Within three (3) days after registering or updating the registration file of a sex offender, the Department of Correction, the Department of Community Correction, the Department of Human Services, the sentencing court, or the local law enforcement agency having jurisdiction shall report, by written or electronic means, all information obtained from the sex offender and regarding the sex offender to the Arkansas Crime Information Center.

(2) The center shall immediately enter the information into its record system for maintenance in a central registry and notify the local law enforcement agency having jurisdiction.

(3) The center will share information with the National Sex Offender Registry.

(b)(1)(A) No later than ten (10) days after release from incarceration or after the date of sentencing, a sex offender shall report to the local law enforcement agency having jurisdiction and update the information in the registration file.

(B) If the sex offender is not already registered, the local law enforcement agency having jurisdiction shall register the sex offender in accordance with this subchapter.

(2) Within three (3) days after registering a sex offender or receiving updated registry information on a sex offender, the local law enforcement agency having jurisdiction shall report, by written or electronic means, all information obtained from the sex offender to the center.

(3) The center shall verify the address of sexually violent predators on a quarterly basis and the address of all other sex offenders on a semiannual basis.

(4) The center shall have access to the offender tracking systems of the Department of Correction and the Department of Community Correction to confirm the location of registrants..

History. Acts 1997, No. 989, § 6; 1999, No. 1353, § 5; 2001, No. 1743, § 6.

CASE NOTES**Strict Liability Offense.**

Because the failure to register as a sex offender was a strict liability offense under § 12-12-901 et seq. and the state proved that defendant was required to

register but failed to do so, the trial court did not err by denying defendant's motion for a directed verdict. *Adkins v. State*, 371 Ark. 159, 264 S.W.3d 523 (2007).

12-12-908. Registration format — Requirements.

(a) The Director of the Arkansas Crime Information Center shall prepare the format for registration as required in subsection (b) of this section and shall provide instructions for registration to each organized full-time municipal police department, county sheriff's office, the Department of Correction, the Department of Community Correction, the Department of Human Services, and the Administrative Office of the Courts.

(b) The registration file required by this subchapter shall include:

(1) The sex offender's full name and all aliases that the sex offender has used or under which the sex offender has been known;

(2) Date of birth;

(3) Sex;

(4) Race;

(5) Height;

(6) Weight;

(7) Hair and eye color;

(8) Address of any temporary residence;

(9) Anticipated address of legal residence;

(10) Driver's license number or state identification number, if available;

(11) Social security number;

(12) Place of employment, education, or training;

(13) Photograph, if not already obtained;

(14) Fingerprints, if not already obtained;

(15) Date of arrest, arresting agency, offense for which convicted or acquitted, and arrest tracking number for each adjudication of guilt or acquittal on the grounds of mental disease or defect;

(16) A brief description of the crime or crimes for which registration is required;

(17) The registration status of the sex offender as a sexually violent predator, aggravated sex offender, or sex offender;

(18) A statement in writing signed by the sex offender acknowledging that the sex offender has been advised of the duty to register imposed by this subchapter; and

(19) Any other information that the center deems necessary, including, but not limited to:

(A) Criminal and corrections records;

(B) Nonprivileged personnel records;

(C) Treatment and abuse registry records; and

(D) Evidentiary genetic markers.

(c) Certain information such as social security number, driver's license number, employer, information that may lead to identification of the victim, and the like may be excluded from the information that is released during the course of notification.

History. Acts 1997, No. 989, § 7; 1999, 1997, No. 989, § 7, subsection (a) began: No. 1353, § 6; 2001, No. 1743, § 7. "Within sixty (60) days after August 1, A.C.R.C. Notes. As enacted by Acts 1997..."

12-12-909. Verification form — Change of address.

(a)(1)(A) For a person required to register as a sex offender, every six (6) months after the person's initial registration date during the period in which the person is required to register, the following applies:

(i) The Arkansas Crime Information Center shall mail a nonforwardable verification form to the last reported address of the person by certified mail;

(ii)(a) The person shall return the verification form in person to the local law enforcement agency having jurisdiction within ten (10) days after receipt of the form.

(b) Within three (3) days after receipt of the form, the local law enforcement agency having jurisdiction shall forward the form to the center;

(iii) The verification form shall be signed by the person and state that the person still resides at the address last reported to the center; and

(iv) If the person fails to return the verification form to the local law enforcement agency having jurisdiction within ten (10) days after receipt of the form, the person shall be in violation of this subchapter.

(B) Should the sex offender or sexually violent predator change address without notice or fail to return the verification of residence, notification will be sent to law enforcement and supervising parole or probation authority, and notice may be posted on the Internet until proper reporting is again established or the person is incarcerated.

(2) The provisions of subdivision (a)(1) of this section shall be applied to a person required to register as a sexually violent predator, except that the person must verify the registration every ninety (90) days after the date of the initial release or commencement of parole.

(b)(1) Before a change of address within the state, a sex offender shall report the change of address to the center no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address.

(2) When a change of address within the state is reported to the center, the center shall immediately report the change of address to the local law enforcement agency having jurisdiction where the sex offender expects to reside.

(c)(1) Before a change of address to another state, a sex offender shall register the new address with the center and with a designated law

enforcement agency in the state to which the person moves not later than ten (10) days before such person establishes residence or is temporarily domiciled in the new state if the new state has a registration requirement.

(2) When a change of address to another state is reported to the center, the center shall immediately notify the law enforcement agency with which the sex offender must register in the new state if the new state has a registration requirement.

(d) The center may require a sex offender to report a change of address through the local law enforcement agency having jurisdiction.

History. Acts 1997, No. 989, § 8; 2001, No. 1743, § 8; 2007, No. 394, § 6.

Amendments. The 2007 amendment inserted "by certified mail" in (a)(1)(A)(i).

CASE NOTES

Construction With Other Law.

This section requires sex offenders to report changes in employment 10 days before they occur and § 12-12-904 provides sex offenders with an affirmative defense if they notify authorities no later than five days after changing employment; reading the two statutes together makes it clear that a defendant must

notify authorities 10 days prior to changing employment, absent an affirmative defense, and since the loss of employment constitutes a change, §§ 12-12-904 and 12-12-903 do not allow a 30-day grace period for reporting a change in employment. *Mashburn v. State*, 87 Ark. App. 89, 189 S.W.3d 73 (2004).

12-12-910. Fine.

(a) Unless finding that undue hardship would result, the sentencing court shall assess at the time of sentencing a mandatory fine of two hundred fifty dollars (\$250) on any person who is required to register under this subchapter.

(b) The fine provided in subsection (a) of this section and collected in circuit court, district court, or city court shall be remitted by the tenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the Sex and Child Offenders Registration Fund as established by § 12-12-911.

History. Acts 1997, No. 989, § 9; 2003, No. 1765, § 4.

12-12-911. Sex and Child Offenders Registration Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Sex and Child Offenders Registration Fund".

(b)(1) This fund shall consist of special revenues collected pursuant to § 12-12-910, there to be used equally by the Arkansas Crime Information Center and the Department of Correction for the administration of this subchapter.

(2) Any unexpended balance of this fund shall be carried forward and made available for the same purpose.

History. Acts 1997, No. 989, § 10; 1999, No. 1353, § 7; 2003 (2nd Ex. Sess.), No. 21, § 5.

12-12-912. Arrests for violations.

(a) In order for a sex offender to be charged with the commission of a violation of this subchapter so that an arrest warrant shall be issued, it shall be the duty of the local law enforcement agency having jurisdiction to notify the prosecutor when the local law enforcement agency having jurisdiction has reasonable grounds for believing that a sex offender is not registered, has not reported a change of address, or has not verified the sex offender's address in violation of this subchapter.

(b) The address of a sex offender as listed in the sex offender's registration file shall determine which local law enforcement agency has jurisdiction.

(c) A law enforcement officer shall arrest a sex offender when a warrant has been issued for the sex offender's arrest or the officer has reasonable grounds for believing that a sex offender is not registered or has not reported a change of address in violation of this subchapter.

History. Acts 1997, No. 989, § 12; 2001, No. 1743, § 9.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Management, 24 U. Ark. Little Rock L. Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency Rev. 501.

12-12-913. Disclosure.

(a)(1) Registration records maintained pursuant to this subchapter shall be open to any criminal justice agency in this state, the United States, or any other state.

(2) Registration records may also be open to government agencies authorized by law to conduct confidential background checks.

(b) In accordance with guidelines promulgated by the Sex Offender Assessment Committee, local law enforcement agencies having jurisdiction shall disclose relevant and necessary information regarding sex offenders to the public when the disclosure of such information is necessary for public protection.

(c)(1)(A) The Sex Offender Assessment Committee shall promulgate guidelines and procedures for the disclosure of relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection.

(B) In developing the guidelines and procedures, the Sex Offender Assessment Committee shall consult with persons who, by experience or training, have a personal interest or professional expertise in law enforcement, crime prevention, victim advocacy, criminology, psychology, parole, public education, and community relations.

(2)(A) The guidelines and procedures shall identify factors relevant to a sex offender's future dangerousness and likelihood of reoffense or threat to the community.

(B) The guidelines and procedures shall also address the extent of the information to be disclosed and the scope of the community to whom disclosure shall be made as these factors relate to the:

(i) Level of the sex offender's dangerousness;

(ii) Sex offender's pattern of offending behavior; and

(iii) Need of community members for information to enhance their individual and collective safety.

(3) The Sex Offender Assessment Committee shall submit the proposed guidelines and procedures to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor for their review and shall report to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor every six (6) months on the implementation of this section.

(d)(1) A local law enforcement agency having jurisdiction that decides to disclose information pursuant to this section shall make a good faith effort to notify the public and residents at least fourteen (14) days before a sex offender is released or placed into the community.

(2) If a change occurs in a sex offender's release plan, this notification provision shall not require an extension of the release date.

(3) In conjunction with the notice provided under § 12-12-914, the Department of Correction and the Department of Human Services shall make available to a local law enforcement agency having jurisdiction all information that the Department of Correction and the Department of Human Services have concerning the sex offender, including information on risk factors in the sex offender's history.

(e)(1) A local law enforcement agency having jurisdiction that decides to disclose information under this section shall make a good faith effort to conceal the identity of the victim or victims of the sex offender's offense.

(2) Except as provided in subsection (j) of this section, information under this section is not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(f) A local law enforcement agency having jurisdiction may continue to disclose information on a sex offender under this section for as long as the sex offender is required to be registered under this subchapter.

(g)(1) The State Board of Education and the State Board of Career Education shall promulgate guidelines for the disclosure to students and parents of information regarding a sex offender when such information is released to a local school district or institution of vocational training by a local law enforcement agency having jurisdiction.

(2) The Arkansas Higher Education Coordinating Board shall promulgate guidelines for the disclosure to students of information regarding a sex offender when information regarding a sex offender is released to an institution of higher education by a local law enforcement agency having jurisdiction.

(3) In accordance with guidelines promulgated by the State Board of Education, the board of directors of a local school district or institution of vocational training shall adopt a written policy regarding the distribution to students and parents of information regarding a sex offender.

(4) In accordance with guidelines promulgated by the Arkansas Higher Education Coordinating Board, the board of directors of an institution of higher education shall adopt a written policy regarding the distribution to students of information regarding a sex offender.

(h) Nothing in this section shall prevent a law enforcement officer from notifying members of the public about a person who may pose a danger to the public for a reason that is not enumerated in this subchapter.

(i) The medical records or treatment evaluations of a sex offender or sexually violent predator are not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(j)(1)(A) The following information concerning a registered sex offender who is classified as a level 3 or level 4 offender by the Sex Offender Screening and Risk Assessment shall be made public:

(i) The sex offender's complete name, as well as any alias;

(ii) The sex offender's date of birth;

(iii) Any sex offense to which the sex offender has pleaded guilty or nolo contendere or of which the sex offender has been found guilty by a court of competent jurisdiction;

(iv) The street name and block number, county, city, and zip code where the sex offender resides;

(v) The sex offender's race and gender;

(vi) The date of the last address verification of the sex offender provided to the Arkansas Crime Information Center;

(vii) The most recent photograph of the sex offender that has been submitted to the center; and

(viii) The sex offender's parole or probation office.

(B) If a registered sex offender was eighteen (18) years of age or older at time of the commission of the sex offense that required registration under this subchapter and the victim of the sex offense was fourteen (14) years of age or younger and the registered sex offender is classified as a level 2 offender by the Sex Offender Screening and Risk Assessment, the following information concerning the registered sex offender shall be made public:

(i) The registered sex offender's complete name, as well as any alias;

(ii) The registered sex offender's date of birth;

(iii) Any sex offense to which the registered sex offender has pleaded guilty or nolo contendere or of which the registered sex offender has been found guilty by a court of competent jurisdiction;

(iv) The street name and block number, county, city, and zip code where the registered sex offender resides;

(v) The registered sex offender's race and gender;

(vi) The date of the last address verification of the registered sex offender provided to the center;

(vii) The most recent photograph of the registered sex offender that has been submitted to the center; and

(viii) The registered sex offender's parole or probation office.

(C) The center shall prepare and place the information described in subdivisions (j)(1)(A) and (B) of this section on the Internet home page of the State of Arkansas.

(2) The center may promulgate any rules necessary to implement and administer this subsection.

(k) Nothing in this subchapter shall be interpreted to prohibit the posting on the Internet or by other appropriate means of offender fact sheets for those sex offenders who are determined to be:

(1) High-risk or sexually violent predators, risk level 3 and level 4; or

(2) In noncompliance with the requirements of registration under rules and regulations promulgated by the Sex Offender Assessment Committee.

History. Acts 1997, No. 989, § 13; 1999, No. 1353, § 8; 2001, No. 1743, § 10; 2003, No. 330, §§ 1, 2; 2003 (2nd Ex. Sess.), No. 21, § 6; 2005, No. 1962, § 35; 2007, No. 147, § 1; 2007, No. 394, § 7; 2009, No. 165, § 7.

A.C.R.C. Notes. As enacted by Acts 2003, No. 330, § 2, subsection (j) began: "Beginning on September 1, 2003."

As enacted by Acts 2003, No. 330, § 2, subdivision (j)(1)(B) ended with: "before January 1, 2004".

Amendments. The 2005 amendment inserted "for reasons" in (h).

The 2007 amendment by No. 147 deleted "the Arkansas Higher Education Coordinating Board of the Department of Higher Education" following "The State Board of Education" in (g)(1); substituted "institution of vocational training" for "institution of higher education or vocational training" in (g)(1) and present (g)(3); in-

serted present (g)(2) and (g)(4), redesignating the remaining subdivisions accordingly; and made related changes.

The 2007 amendment by No. 394 substituted "Offender" for "Offenders" in (b), (c)(1)(A), (c)(1)(B) and (c)(3); substituted "alias" for "aliases" in (j)(1)(A)(i); substituted "Any sex offense" for "The sexual offense or offenses" in (j)(1)(A)(iii); substituted "Arkansas Crime Information Center" for "center" in (j)(1)(A)(vi); added (j)(1)(B); added (j)(1)(C)(i) designation; in (j)(1)(C)(i), inserted "described" following "information", substituted "subdivisions" for "subdivision" and inserted "and (B)"; and added (j)(1)(C)(ii).

The 2009 amendment deleted (j)(1)(C)(ii).

Cross References. Registered offender living near school, public park, youth center, or daycare prohibited, § 5-14-128.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Law Enforcement and Emergency

Management, Sex Offender Registration, 26 U. Ark. Little Rock L. Rev. 427.

CASE NOTES

Cited: Ark. Dep't of Corr. Sex Offender Screening & Risk Assessment v. Claybaugh, 93 Ark. App. 11, 216 S.W.3d 134 (2005); Burchette v. Sex Offender Screening & Risk Assessment Comm., 374 Ark.

467, 288 S.W.3d 614 (2008); Parkman v. Sex Offender Screening & Risk Assessment Comm., — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 308 (Apr. 16, 2009).

12-12-914. Notice of release.

(a)(1) The Department of Correction shall provide notice by written or electronic means to the Arkansas Crime Information Center of the anticipated release from incarceration in a county or state penal institution of a person serving a sentence for a sex offense.

(2) The Department of Human Services shall provide notice by written or electronic means to the center of the anticipated release from incarceration of a person committed following an acquittal on the grounds of mental disease or defect for a sex offense.

(b)(1)(A) If available, the notice required in subsection (a) of this section shall be provided to the center ninety (90) days before the offender's anticipated release.

(B) However, a good faith effort shall be made to provide the notice at least thirty (30) days before release.

(2) The notice shall include the person's name, identifying factors, offense history, and anticipated future residence.

(c) Upon receipt of notice, the center shall provide notice by written or electronic means to:

(1) The local law enforcement agency having jurisdiction; and

(2) Other state and local law enforcement agencies as appropriate for public safety.

(d)(1) Where possible, victim notification pursuant to this subchapter shall be accomplished by means of the computerized victim notification system established under § 12-12-1201 et seq.

(2) If notification cannot be made throughout the system established under § 12-12-1201 et seq., the Department of Correction shall provide the notification to the victim.

History. Acts 1997, No. 989, § 14; 1999, No. 1353, § 9; 2001, No. 1743, § 11.

12-12-915. Authority — Rules.

(a) The Department of Correction, the Department of Community Correction, the Department of Human Services, the Administrative Office of the Courts, and the Arkansas Crime Information Center shall promulgate rules to establish procedures for:

(1) Notifying the sex offender of the obligation to register pursuant to this subchapter; and

(2) Registering the sex offender.

(b)(1) The Department of Community Correction shall monitor an adult sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

(2) The Department of Human Services shall monitor an adult or juvenile sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

(c)(1) The Department of Community Correction shall promulgate rules to establish procedures for monitoring an adult sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

(2) The Department of Human Services shall promulgate rules to establish procedures for monitoring an adult or juvenile sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

History. Acts 1997, No. 989, § 15; 2003 (2nd Ex. Sess.), No. 21, § 7; 2006 (1st Ex. Sess.), No. 4, § 4; 2007, No. 394, § 8.

Amendments. The 2007 amendment added (b)(1) designation; in (b)(1), deleted “Department of Correction, the” preceding “Department”, substituted “shall” for “and the Department of Health and Human

Services may”, substituted “an adult” for “a”, inserted “under its supervisory authority who is”; added (b)(2) and made a minor punctuation change; in (c)(1), substituted “an adult” for “a” and inserted “under its supervisory authority who is”; and rewrote (c)(2).

12-12-916. Publication and notice of obligation to register.

The Office of Driver Services of the Department of Finance and Administration shall provide notice of the obligation to register pursuant to this subchapter in connection with each driver’s license issued pursuant to § 27-16-801 and each identification card issued pursuant to § 27-16-805.

History. Acts 1997, No. 989, § 16.

A.C.R.C. Notes. As enacted by Acts 1997, No. 989, § 16, this section contained a subsection (a) that read: “The Arkansas Crime Information Center shall cause no-

tice of the obligation to register to be published in a manner reasonably calculated to reach the general public within thirty (30) days after the effective date of this act [August 1, 1997].”

12-12-917. Evaluation protocol — Sexually violent predators — Juveniles adjudicated delinquent — Examiners.

(a)(1) The Sex Offender Assessment Committee shall develop an evaluation protocol for preparing reports to assist courts in making determinations whether or not a person adjudicated guilty of a sex offense should be considered a sexually violent predator for purposes of this subchapter.

(2) The committee shall also establish qualifications for examiners and qualify examiners to prepare reports in accordance with the evaluation protocol.

(b)(1) The committee shall cause an assessment to be conducted on a case-by-case basis of the public risk posed by a sex offender or sexually violent predator:

(A) Who is required to register under § 12-12-905 after August 1, 1997; and

(B) For whom the Arkansas Crime Information Center has no record of an assessment's being done and a risk level established subsequent to August 1, 1997.

(2)(A)(i) An adult offender convicted of an offense described in 42 U.S.C. § 14071 et seq., as it existed on March 1, 2003, Pub. L. No. 109-248, as it existed on January 1, 2007, or § 12-12-903(12) shall be assessed.

(ii)(a) Subject to subdivision (c)(1) of this section, the prosecuting attorney and any law enforcement agency shall furnish the file relating to the offender to Sex Offender Screening and Risk Assessment at the Department of Correction within thirty (30) days of an offender's adjudication of guilt.

(b)(1) The prosecuting attorney shall make a copy of any relevant records concerning the offender and shall forward the copied relevant records to Sex Offender Screening and Risk Assessment within thirty (30) days of the adjudication.

(2) The relevant records include, but are not limited to:

(A) Arrest reports;

(B) Incident reports;

(C) Offender statements;

(D) Judgment and disposition forms;

(E) Medical records;

(F) Witness statements; and

(G) Any record considered relevant by the prosecuting attorney.

(B) A sex offender sentenced to life, life without parole, or death shall be assessed only if the sex offender is being considered for release.

(3) A sex offender currently in the state who has not been assessed and classified shall be identified by the center.

(4)(A) If a sex offender fails to appear for assessment, is aggressive, threatening, or disruptive to the point that Sex Offender Screening and Risk Assessment staff cannot proceed with the assessment process, or voluntarily terminates the assessment process after having been advised of the potential consequences:

(i) The sex offender shall be classified as a risk level 3 or referred to the Sex Offender Assessment Committee as a risk level 4; and

(ii) The parole or probation officer, if applicable, shall be notified.

(B) A sex offender has immunity for a statement made by him or her in the course of assessment with respect to prior conduct under the immunity provisions of § 16-43-601 et seq.

(C) Assessment personnel shall report ongoing child maltreatment as required under the Child Maltreatment Act, § 12-18-101 et seq.

(c)(1) To the extent permissible and under the procedures established by state and federal regulations, public agencies shall provide

the committee access to all relevant records and information in the possession of public agencies or any private entity contracting with a public agency relating to the sex offender or sexually violent predator under review.

(2) The records and information include, but are not limited to:

- (A) Police reports;
- (B) Statements of probable cause;
- (C) Presentence investigations and reports;
- (D) Complete judgments and sentences;
- (E) Current classification referrals;
- (F) Criminal history summaries;
- (G) Violation and disciplinary reports;
- (H) All psychological evaluations and psychiatric hospital reports;
- (I) Sex offender or sexually violent predator treatment program reports;

(J) Juvenile court records;

(K) Victim impact statements;

(L) Investigation reports to the Child Abuse Hotline, the Division of Children and Family Services of the Department of Human Services, and any entity contracting with the Department of Human Services for investigation or treatment of sexual or physical abuse or domestic violence; and

(M) Statements of medical providers treating victims of sex offenses indicating the extent of injury to the victim.

(d)(1) Records and information obtained under this section shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., unless otherwise authorized by law.

(2)(A)(i) The sex offender or sexually violent predator shall have access to records and information generated and maintained by the committee.

(ii) These records shall include any reports of the assessment and the tape of the interview but do not include restricted source documents of commercial psychological tests or working notes of staff.

(B)(i) Unless otherwise ordered by a court of competent jurisdiction, records and information generated by other agencies and obtained under this section shall not be available to the sex offender or sexually violent predator except through the agency or individual having primary custody of the records.

(ii) Upon request, the sex offender shall be given a list of the records or information obtained.

(C) If the record or information generated contains the address of a victim or a person who has made a statement adverse to the sex offender or sexually violent predator, the address shall be redacted and the sex offender or sexually violent predator shall have access to records and information other than the identity and address.

(e) In classifying the sex offender into a risk level for the purposes of public notification under § 12-12-913, the committee, through its staff,

shall review each sex offender or sexually violent predator under its authority:

(1) Prior to the sex offender's release for confinement in a correctional facility;

(2) Prior to the release of a person who has been committed following an acquittal on the grounds of mental disease or defect;

(3) At the start of a sex offender's suspended imposition of sentence; or

(4) At the start of a sex offender's probation period.

(f)(1)(A) The committee shall issue the offender fact sheet to the local law enforcement agency having jurisdiction.

(B) The offender fact sheet is provided to assist the local law enforcement agency having jurisdiction in its task of community notification.

(2) The committee shall provide the Parole Board with copies of the offender fact sheet on inmates of the Department of Correction.

(3) The committee shall provide the Department of Community Correction with copies of the offender fact sheet on any sex offender under the Department of Community Correction's supervision.

(4)(A)(i) The offender fact sheet shall be prepared on a standard form for ease of transmission and communication.

(ii) The offender fact sheet shall also be on an Internet-based application accessible to law enforcement, state boards, and licensing agencies.

(iii) The offender fact sheet of a sexually violent predator and a sex offender found by the center to be in violation of the registration requirement shall be made available to the general public unless the release of the offender fact sheet, in the opinion of the committee based on a risk assessment, places an innocent individual at risk.

(B) The standard form shall include, but not be limited to:

(i) Registration information as required in § 12-12-908;

(ii) Risk level;

(iii) Date of deoxyribonucleic acid (DNA) sample;

(iv) Psychological factors likely to affect sexual control;

(v) Victim age and gender preference;

(vi) Treatment history and recommendations; and

(vii) Other relevant information deemed necessary by the committee or by professional staff performing sex offender assessments.

(5)(A) The committee shall ensure that the notice is complete in its entirety.

(B) A law enforcement officer shall notify the center if a sex offender has moved or is otherwise in violation of a registration requirement.

(6)(A) All material used in the assessment shall be kept on file in its original form for one (1) year.

(B) After one (1) year the file may be stored electronically.

(g)(1) In cooperation with the committee, the Department of Correction shall promulgate rules and regulations to establish the review process for assessment determinations.

(2)(A) The sex offender or sexually violent predator may request an administrative review of the assigned risk level under the conditions stated and following the procedures indicated under § 12-12-922.

(B) The sex offender shall be notified of these rights and procedures in the documentation sent with the notification of risk level.

(h)(1)(A) A sex offender or sexually violent predator may request the committee to reassess the sex offender's assigned risk level after five (5) years have elapsed since initial risk assessment by the committee and may renew that request one (1) time every five (5) years.

(B) In the request for reassessment, the sex offender shall list the facts and circumstances that demonstrate that the sex offender no longer poses the same degree of risk to the community.

(2)(A) A local law enforcement agency having jurisdiction, the Department of Community Correction, or the Parole Board may request the committee to reassess a sex offender's assigned risk level at any time.

(B) In the request for reassessment, the local law enforcement agency having jurisdiction, the Department of Community Correction, or the Parole Board shall list the facts and circumstances that prompted the requested reassessment.

(3) The committee shall also take into consideration any subsequent criminal act by the sex offender or sexually violent predator during a reassessment.

History. Acts 1997, No. 989, § 17; 1999, No. 1353, §§ 10, 11; 2001, No. 1743, § 12; 2003 (2nd Ex. Sess.), No. 21, § 8; 2005, No. 1962, §§ 36, 37; 2006 (1st Ex. Sess.), No. 4, § 5; 2007, No. 394, § 9; 2009, No. 758, § 25.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1999, No. 1353, § 10. This section was also amended by Acts 1999, No. 1353, § 11 to read as follows: "The Sex Offenders Assessment Committee shall develop an evaluation protocol for preparing reports to assist courts in making determinations whether or not a person adjudicated guilty of a sexually violent offense should be considered a sexually violent predator for purposes of this subchapter. The committee shall also establish qualifications for and qualify examiners to prepare reports in accordance with the evaluation protocol."

Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et

seq., becomes effective."

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Amendments. The 2005 amendment, in (b)(4)(A), substituted "state" for "community" and "center" for "Arkansas Crime Information Center"; and, in (b)(4)(B)(ii)(b), substituted "A sex offender shall have immunity for a statement" for "Statements," "him or her" for "a sex offender," and deleted "shall be deemed to have been given use immunity" preceding "under the immunity provisions."

The 2006 (1st Ex. Sess.) amendment rewrote (b).

The 2007 amendment inserted "Pub. L. No. 109-248, as it existed on January 1, 2007" in (a)(2)(A)(i); deleted "through clemency" following "release" in (a)(2)(B); substituted "Parole" for "Parol" in (f)(2); added (h)(2) and redesignated former (h)(2) as present (h)(3); and substituted "during a" for "who has requested" in present (h)(3).

The 2009 amendment substituted "Child Maltreatment Act, § 12-18-101 et seq." for "Arkansas Child Maltreatment Act, § 12-12-501 et seq." in (b)(4)(C).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency

Management, 24 U. Ark. Little Rock L. Rev. 501.

CASE NOTES

ANALYSIS

Due Process.
Substantial Evidence.

Due Process.

Under the flexible Mathews factors, the procedural avenues afforded by the Sex Offender Registration Act, § 12-12-901 et seq., were constitutionally adequate and provided notice to offenders of the risk assessment process and a meaningful opportunity to be heard; the Registration Act provides for an adversarial judicial review of the Sex Offender Assessment Committee's administrative review decision, with the full procedural guarantees set forth in the Arkansas Administrative Procedure Act, and it was unlikely that a right to counsel or to confront witnesses at the initial assessment stage would have appreciably reduced the risk of an erroneous determination. *Weems v. Little Rock Police Dep't*, 453 F.3d 1010 (8th Cir. 2006), rehearing denied, *Weems v. Johnson*, — F.3d —, 2006 U.S. App. LEXIS 21238 (8th Cir. Aug. 18, 2006), cert. denied, *Weems v. Johnson*, 550 U.S. 917, 127 S. Ct. 2128, 167 L. Ed. 2d 862 (2007).

Regardless of the reason one was required to register as a sex offender, the procedures afforded by the Sex Offender Registration Act, § 12-12-901 et seq., were the same; those procedures comported with procedural due-process requirements. *Ark. Dep't of Corr. v. Bailey*, 368 Ark. 518, 247 S.W.3d 851 (2007).

Alleged sex offender's due process rights under the United States and Ar-

kansas Constitutions were not violated by a determination that he was a Level 3 offender because he had a meaningful opportunity to be heard through a face-to-face interview and review by a sex offender assessment committee. A second face-to-face interview was not required. *Burchette v. Sex Offender Screening & Risk Assessment Comm.*, 374 Ark. 467, 288 S.W.3d 614 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 772 (Dec. 4, 2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 773 (Dec. 4, 2008).

Substantial Evidence.

Where the Sex Offender Screening and Risk Assessment Committee specifically found that the documents it received pursuant to subsection (c) of this section reflected appellant was convicted of two separate sexual assaults on two separate women, admitted that he had been involved in forced sex acts, could not stand rejection, thought about raping, and said that raping made him feel better, there was substantial evidence to support the Committee's assessment of appellant as a level four offender. The Committee did not improperly base appellant's classification upon his demeanor. *Parkman v. Sex Offender Screening & Risk Assessment Comm.*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 308 (Apr. 16, 2009).

Cited: *Ark. Dep't of Corr. Sex Offender Screening & Risk Assessment v. Claybaugh*, 93 Ark. App. 11, 216 S.W.3d 134 (2005).

12-12-918. Classification as sexually violent predator.

(a)(1) In order to classify a person as a sexually violent predator, a prosecutor may allege on the face of an information that the prosecutor is seeking a determination that the defendant is a sexually violent predator.

(2)(A) If the defendant is adjudicated guilty, the court shall enter an order directing an examiner qualified by the Sex Offender Assessment Committee to issue a report to the sentencing court that

recommends whether or not the defendant should be classified as a sexually violent predator.

(B) Copies of the report shall be forwarded immediately to the prosecutor and to the defense attorney.

(C) The report shall not be admissible for purposes of sentencing.

(3) After sentencing, the court shall make a determination regarding the defendant's status as a sexually violent predator.

(b)(1) In order for the examiner qualified by the committee to prepare the report:

(A) The defendant may be sent for evaluation to a facility designated by the Department of Correction; or

(B) The committee may elect to send an examiner to the local or regional detention facility.

(2) The cost of the evaluation shall be paid by the Department of Correction.

(c)(1) Should evidence be found in the course of any assessment conducted by the committee that a defendant appears to meet the criteria for being classified as a sexually violent predator, the committee shall bring this information to the attention of the prosecutor, who will determine whether to file a petition with the court for the defendant to be classified as a sexually violent predator.

(2) The sentencing court shall retain jurisdiction to determine whether a defendant is a sexually violent predator for one (1) year after sentencing or for so long as the defendant remains incarcerated for the sex offense.

(d)(1) The judgment and commitment order should state whether the offense qualifies as an aggravated sex offense.

(2) Should the aggravated sex offense box not be checked on the commitment order, the court will be contacted by the committee and asked to furnish a written determination as to whether the offense qualifies as an aggravated sex offense.

History. Acts 1997, No. 989, § 18; 1999, No. 1353, § 12; 2001, No. 1743, § 13; 2003 (2nd Ex. Sess.), No. 21, § 9.

12-12-919. Termination of obligation to register.

(a) Lifetime registration is required for a sex offender:

(1) Found to have committed an aggravated sex offense;

(2) Determined by the court to be a sexually violent predator; or

(3) Found to have been adjudicated guilty of a second or subsequent sex offense under a separate case number, not multiple counts on the same charge.

(b)(1)(A)(i) Any other sex offender required to register under this subchapter may make application for an order terminating the obligation to register to the sentencing court fifteen (15) years after release from incarceration or other institution or fifteen (15) years

after having been placed on probation or any other form of community supervision by the court.

(ii) A sex offender sentenced in another state but permanently residing in Arkansas may make an application for an order terminating the obligation to register to the court of the county in which the sex offender resides.

(B)(i) The court shall hold a hearing on the application at which the applicant and any interested persons may present witnesses and other evidence.

(ii) No fewer than twenty (20) days prior to the date of the hearing on the application, a copy of the application for termination of the obligation to register shall be served on the prosecutor of the county in which the adjudication of guilt triggering registration was obtained.

(2) The court shall grant an order terminating the obligation to register upon proof by a preponderance of the evidence that:

(A) The applicant placed on parole, supervised release, or probation has not been adjudicated guilty of a sex offense for a period of fifteen (15) years after the applicant was released from prison or other institution; and

(B) The applicant is not likely to pose a threat to the safety of others.

History. Acts 1997, No. 989, § 19; 1999, No. 1353, § 13; 2001, No. 1743, § 14; 2003 (2nd Ex. Sess.), No. 21, § 10.

12-12-920. Immunity from civil liability.

(a) Public officials, public employees, and public agencies are immune from civil liability for good faith conduct under this subchapter.

(b) Nothing in this subchapter shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for any discretionary decision to release relevant and necessary information, unless it is shown that the public official, public employee, or public agency acted with gross negligence or in bad faith.

(c) The provisions of this section shall also apply to persons or organizations assisting a public official, public employee, or public agency in performing official duties upon a written request to assist them by the public official, public employee, or public agency.

History. Acts 1997, No. 989, § 20; 1999, No. 1353, § 14.

12-12-921. Sex Offender Assessment Committee.

(a) The Sex Offender Assessment Committee shall consist of nine (9) members as follows:

(1) The Governor shall appoint, subject to confirmation by the Senate:

- (A) One (1) member who is a criminal defense attorney;
- (B) One (1) member who is a prosecuting attorney;
- (C) One (1) member who is a licensed mental health professional and has demonstrated expertise in the treatment of sex offenders;
- (D) One (1) member who is a victims' rights advocate;
- (E) One (1) member who is a law enforcement officer; and
- (F) One (1) member with expertise in juvenile justice or treatment;

(2) The Director of the Department of Correction or the director's designee;

(3) The Director of the Department of Community Correction or the director's designee; and

(4) The Director of the Arkansas Crime Information Center or the director's designee.

(b)(1) Members appointed by the Governor shall be for four-year staggered terms to be assigned by lot at the first meeting.

(2) If a vacancy of one (1) of the members appointed by the Governor occurs for any reason other than expiration of a regular term, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor.

(3) A member of the committee appointed by the Governor may be removed by the Governor for neglect of duty or malfeasance in office.

(4) A member shall be considered active unless his or her resignation has been submitted or requested by the Governor or he or she has more than two (2) unexcused absences from meetings in a twelve-month period and this fact has been reported to the Governor's office.

(c) The members of the committee shall elect annually a chair and a vice chair from their membership.

(d) The Director of the Department of Correction or the director's designee shall serve as the executive secretary.

(e)(1) A majority of the members of the committee shall constitute a quorum for the transaction of business.

(2) The committee shall meet at least quarterly.

(3) A special meeting may be called by the chair or as provided by the rules adopted by the committee.

(f) The executive secretary of the committee shall keep full and true records of all committee proceedings and preserve all books, documents, and papers relating to the business of the committee.

(g) The meetings shall be open to the public except when the committee is discussing, deliberating, or voting on an individual case.

(h)(1) The committee shall report in writing to the Governor and to the Legislative Council by July 31 of each year.

(2) The report shall contain:

(A) A summary of the proceedings of the committee during the preceding fiscal year;

(B) A detailed and itemized statement of all revenue and of all expenditures made by or on behalf of the committee;

(C) Other information deemed necessary or useful; and

(D) Any additional information that may be requested by the Governor and the Legislative Council.

History. Acts 2003 (2nd Ex. Sess.), No. 21, § 11; 2005, No. 1962, § 38. inserted “criminal” preceding “defense attorney” in (a)(1)(A).

Amendments. The 2005 amendment

12-12-922. Alternative procedure for sexually violent predator evaluations.

(a)(1) The alternative procedure under this section may be used for sexually violent predator evaluations if information that was not available to the court at the time of trial emerges in the course of a sex offender evaluation.

(2)(A) Examiners qualified by the Sex Offender Assessment Committee shall include in the assessment of any sex offender convicted of a sex offense a review as to whether the frequency, repetition over time, severity of trauma to the victim, or established pattern of predatory behaviors suggests that the sex offender is likely to engage in future predatory sexual offenses.

(B) If a mental abnormality or personality disorder is suspected, a licensed psychologist or psychiatrist qualified by the committee may conduct further assessment to determine the presence or absence of a mental abnormality or personality disorder.

(C) If further assessment under subdivision (a)(2)(B) of this section is conducted by a licensed psychologist or psychiatrist qualified by the committee, the report of the further assessment shall be presented to the committee.

(b)(1)(A) A sex offender may challenge an assigned risk level by submitting a written request for an administrative review.

(B) As part of the request for an administrative review, the sex offender may request in writing copies of all documents generated by the examiners, a listing by document name and source of all documents that may be available from other agencies having custody of those documents, and a copy of the tape of the interview.

(2) The request for an administrative review shall be made in accordance with instructions provided on the risk level notification and within fifteen (15) days of receipt of the advisement of risk level notification to the sex offender by certified mail and first-class mail.

(3)(A) The basis of the request for administrative review shall be clearly stated and any documentary evidence attached.

(B) The basis for administrative review is:

(i) The rules and procedures were not properly followed in reaching a decision on the risk level of the sex offender;

(ii) Documents or information not available at the time of assessment have a bearing on the risk that the sex offender poses to the community; or

(iii) The assessment is not supported by substantial evidence.

(4) Unless a request for an administrative review is received by the committee within twenty (20) days of postmark of the advisement of risk level notification sent to the sex offender sent by certified mail and first-class mail or delivered by personal service, an offender fact sheet shall be made available to law enforcement so that community notification may commence. Receipt of the advisement of risk level notification will be presumed within five (5) days of postmark of the advisement of risk level notification by both certified mail and first-class mail.

(5) If a request for an administrative review is received by the committee, law enforcement may make community notification only at the level immediately below the level upon which review has been requested.

(6)(A) A member of the committee shall conduct the review and respond within thirty (30) days of receiving a request for an administrative review.

(B) If additional time is needed to obtain facts, the committee shall notify the sex offender requesting the review.

(7)(A)(i) The findings of the administrative review shall be sent to the sex offender by certified mail. Community notification at the risk level assigned in the administrative review shall commence five (5) calendar days after the postmark of the advisement of the findings of the administrative review.

(ii) Upon receipt of the findings, the sex offender has thirty (30) days to file a petition under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for judicial review in the Pulaski County Circuit Court or in the circuit court of the county where the sex offender resides or does business.

(B) The circuit court shall refuse to hear any appeal of an assigned risk level by a sex offender unless the circuit court finds that the administrative remedies available to the sex offender under this subsection have been exhausted.

(8)(A)(i) A copy of the petition for judicial review shall be served on the executive secretary of the committee in accordance with the Arkansas Rules of Civil Procedure.

(ii) When the petition for judicial review has been served on the executive secretary of the committee, a record of the committee's findings and copies of all records in its possession shall be furnished by the committee to the circuit court within thirty (30) days of service.

(B) The committee may ask the circuit court to seal statements of victims, medical records, and other items that could place third parties at risk of harm.

(9) A ruling by the circuit court on the petition for judicial review is considered a final judgment.

History. Acts 2003 (2nd Ex. Sess.), No. 21, § 12; 2005, No. 1962, § 39; 2006 (1st Ex. Sess.), No. 4, § 6; 2007, No. 394, § 10.

Amendments. The 2005 amendment made a stylistic change in (a)(1); deleted

“After the effective date of this section” at the beginning of (a)(2)(A); and substituted “shall be” for “is” in (b)(1)(B).

The 2006 (1st Ex. Sess.) amendment rewrote (b).

The 2007 amendment substituted “is likely” for “suffers from a mental abnormality or personality disorder that makes the sex offender likely” in (a)(2)(A); substituted “may conduct” for “shall conduct” in (a)(2)(B); rewrote (a)(2)(C); added “and first-class mail” at the end of (b)(2); in

(b)(4), substituted “postmark” for “receipt”, substituted “sent to” for “by”, inserted “and first-class mail” and added the second sentence; and inserted “at the risk level assigned in the administrative review” following “notification” in (b)(7)(A)(i).

CASE NOTES

ANALYSIS

Due Process.
Final Judgment.
Procedure.

Due Process.

Alleged sex offender’s due process rights under the United States and Arkansas Constitutions were not violated by a determination that he was a Level 3 offender because he had a meaningful opportunity to be heard through a face-to-face interview and review by a sex offender assessment committee. A second face-to-face interview was not required. *Burchette v. Sex Offender Screening & Risk Assessment Comm.*, 374 Ark. 467, 288 S.W.3d 614 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 772 (Dec. 4, 2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 773 (Dec. 4, 2008).

Final Judgment.

After an appeal of a sex offender adjudication was dismissed on the ground that it could not be concluded that appellant had received notice of the Arkansas Department of Corrections Sex Offender Screening and Risk Assessment Committee’s (SOSRA’s) final decision, the court denied SOSRA’s petition for rehearing because subdivisions (b)(6)(A) and (b)(7)(A) of this section required SOSRA to send “findings” to appellant, which proscription was consistent with the requirements of the Arkansas Administrative Procedure Act, § 25-15-212(a). *Munson v. Ark. Dep’t*

of Corr. Sex Offender Screening, 369 Ark. 290, 253 S.W.3d 901 (2007).

Procedure.

Trial court erred in dismissing as untimely appellant’s petition for judicial review of an assessment declaring appellant to be a sex offender where the record did not contain any evidence that letters from the Arkansas Department of Corrections Sex Offender Screening and Risk Assessment Committee were sent to appellant by certified mail, as required by subdivision (b)(7)(A)(i) of this section. Without proof that the letters were properly sent, it could not be said that either letter constituted a final decision under § 25-15-212(b). *Munson v. Arkansas Dep’t of Corr. Sex Offender Screening & Risk Assess.*, 369 Ark. 290, 253 S.W.3d 901 (2007).

Where the Sex Offender Screening and Risk Assessment Committee found that appellant was convicted of two separate sexual assaults on two separate women, admitted that he had been involved in forced sex acts, could not stand rejection, thought about raping, and said that raping made him feel better, there was substantial evidence to support the Committee’s assessment of appellant as a level four offender. Because the Committee determined the presence of a mental abnormality or personality disorder by virtue of its review and assessment of appellant as a level four offender, the Committee complied with the provisions of subdivision (a)(2)(C) of this section. *Parkman v. Sex Offender Screening & Risk Assessment Comm.*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 308 (Apr. 16, 2009).

12-12-923. Electronic monitoring of sex offenders.

(a)(1) Upon release from incarceration, a sex offender determined to be a sexually violent predator whose crime was committed after April 7, 2006, is subject to electronic monitoring for a period of not less than ten (10) years from the date of the sex offender’s release.

(2) Within three (3) days after release from incarceration, a sex offender subject to electronic monitoring under subdivision (a)(1) of this section shall:

(A) Report to the agency responsible under § 12-12-915 for supervising the sex offender; and

(B) Submit to the placement of electronic monitoring equipment upon his or her body.

(b) The agency responsible under § 12-12-915 for supervising the sex offender subject to electronic monitoring shall:

(1) Use a system that actively monitors and identifies the sex offender's location and timely reports or records his or her presence near or within a crime scene or in a prohibited area or his or her departure from specified geographic limitations; and

(2) Contact the local law enforcement agency having jurisdiction as soon as administratively feasible if the sex offender is in a prohibited area.

(c)(1)(A) Unless a sex offender subject to electronic monitoring is indigent, he or she is required to reimburse the supervising agency a reasonable fee to defray the supervision costs.

(B)(i)(a) A sex offender who claims to be indigent shall provide a completed certificate of indigency to the supervising agency.

(b) The supervising agency may at any time review and redetermine whether a sex offender is indigent.

(ii) The certificate of indigency shall:

(a) Be in a form approved by the supervising agency;

(b) Be executed under oath by the sex offender; and

(c) State in bold print that a false statement is punishable as a Class D felony.

(2)(A) The supervising agency shall determine the amount to be paid by a sex offender based on his or her financial means and ability to pay.

(B) However, the amount under subdivision (c)(2)(A) of this section shall not exceed fifteen dollars (\$15.00) per day.

(d) A sex offender subject to electronic monitoring who violates subdivision (a)(2) of this section upon conviction is guilty of a Class C felony.

(e)(1) A person who knowingly alters, tampers with, damages, or destroys any electronic monitoring equipment worn by a sexually violent predator pursuant to this section upon conviction is guilty of a Class C felony.

(2) Subdivision (e)(1) of this section does not apply to the owner of the electronic monitoring equipment or an agent of the owner performing ordinary maintenance or repairs to the electronic monitoring equipment.

SUBCHAPTER 10 — CRIMINAL HISTORY INFORMATION AND REPORTING STANDARDS

SECTION.

- 12-12-1001. Definitions.
- 12-12-1002. Penalties.
- 12-12-1003. Scope.
- 12-12-1004. Completeness and accuracy.
- 12-12-1005. Identification Bureau.
- 12-12-1006. Fingerprinting, DNA sample collection, and photographing.
- 12-12-1007. Reporting requirements.
- 12-12-1008. Dissemination for criminal justice purposes.
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- 12-12-1010. Dissemination for other purposes.
- 12-12-1011. Dissemination limited.
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SECTION.

- 12-12-1013. Right of review and challenge.
- 12-12-1014. Security of criminal history information.
- 12-12-1015. Audit of criminal history records.
- 12-12-1016. Powers and duties of State Crime Laboratory.
- 12-12-1017. Procedures for conduct, disposition, and use of DNA analysis.
- 12-12-1018. Receipt and analysis of DNA samples — Availability of information.
- 12-12-1019. Removal and destruction of the DNA record and DNA sample.

Effective Dates. Acts 1994 (2nd Ex. Sess.), Nos. 37 and 38, § 7: Aug. 25, 1994. Emergency clause provided: "It is hereby found and determined by the General Assembly that serious criminal offenses committed by juveniles have increased to an alarming level and that it will help to deal with these serious juvenile crimes by authorizing the Arkansas Crime Information Center to accumulate juvenile arrest information for those allegations and adjudications of dependency for which the Arkansas Juvenile Code authorizes fingerprints to be taken and maintained, and it will assist in juvenile crime prevention to allow the dissemination of conviction information to nongovernmental entities authorized by federal law; that this act so provides; and this act should go into effect immediately in order to provide additional tools for dealing with juvenile crime as soon as possible. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 447, § 5: Mar. 12, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the

Arkansas Crime Information Center requires additional funds on July 1, 1997, to operate the automated criminal history system; that the system must be operated efficiently to support the State Police and local law enforcement entities in their efforts; that the agency does not currently have the funds and staff necessary to carry out the mandates of the Legislature; that the acquisition of the State Police Automated Fingerprint Identification System was funded by means other than those provided in Arkansas Code 12-12-1012(b)(1); and that operation of the Automated Fingerprint System by the State Police has caused an increase in the operating costs of the Arkansas Crime Information Center. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1102, § 9: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 2005, No. 1573, § 6: Apr. 5, 2005. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that the dissemination of complete, accurate, and timely criminal history information is necessary for the protection of the people of the State of Arkansas; and that this act is needed to provide necessary access to criminal history information. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 762, § 12: Sept. 1, 2009. Effective date clause provided: "This act shall be effective September 1, 2009."

12-12-1001. Definitions.

As used in this subchapter:

(1)(A) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(B) "Administration of criminal justice" also includes criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(2) "Arrest tracking number" means a unique number assigned to an arrestee at the time of each arrest that is used to link that arrest to the final disposition of that charge;

(3) "Central repository" means the Arkansas Crime Information Center, which is authorized to collect, maintain, and disseminate criminal history information;

(4) "CODIS" means the Federal Bureau of Investigation Laboratory's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal forensic laboratories, state forensic laboratories, and local forensic laboratories;

(5) "Conviction information" means criminal history information disclosing that a person has pleaded guilty or nolo contendere to, or was found guilty of, a criminal offense in a court of law, together with sentencing information;

(6)(A) "Criminal history information" means a record compiled by a central repository or the Identification Bureau of the Department of

Arkansas State Police on an individual consisting of names and identification data, notations of arrests, detentions, indictments, informations, or other formal criminal charges. This record also includes any dispositions of the charges, as well as notations on correctional supervision and release.

(B) "Criminal history information" does not include fingerprint records on individuals not involved in the criminal justice system or driver history records;

(7) "Criminal history information system" means the equipment, procedures, agreements, and organizations thereof, for the compilation, processing, preservation, and dissemination of criminal history information;

(8) "Criminal justice agency" means a government agency or any subunit of a government agency that is authorized by law to perform the administration of criminal justice and that allocates more than one-half (1/2) its annual budget to the administration of criminal justice;

(9) "Criminal justice official" means an employee of a criminal justice agency performing the administration of criminal justice;

(10)(A) "Disposition" means information describing the outcome of any criminal charges, including notations that law enforcement officials have elected not to refer the matter to a prosecutor, that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed.

(B) "Disposition" also includes acquittals, dismissals, probations, charges pending due to mental disease or defect, guilty pleas, nolle prosequi, nolo contendere pleas, findings of guilt, youthful offender determinations, first offender programs, pardons, commuted sentences, mistrials in which the defendant is discharged, executive clemencies, paroles, releases from correctional supervision, or deaths;

(11) "Dissemination" means disclosing criminal history information or the absence of criminal history information to any person or organization outside the agency possessing the information;

(12) "DNA" means deoxyribonucleic acid that is located in the cells of an individual, provides an individual's personal genetic blueprint, and encodes genetic information that is the basis of human heredity and forensic identification;

(13)(A) "DNA record" means DNA identification information stored in the State DNA Data Base or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results.

(B) The DNA record is the result obtained from the DNA typing tests.

(C) The DNA record is composed of the characteristics of a DNA sample that are of value in establishing the identity of individuals.

(D) The results of all DNA identification tests on an individual's DNA sample also are collectively referred to as the DNA profile of an individual;

(14) “DNA sample” means a blood, saliva, or tissue sample provided by any individual as required by this subchapter or submitted to the State Crime Laboratory for analysis or storage, or both;

(15) “Expunged record” means a record that was expunged under § 16-90-901 et seq.;

(16) “Identification Bureau” means the Identification Bureau of the Department of Arkansas State Police, which may maintain fingerprint card files and other identification information on individuals;

(17)(A) “Juvenile aftercare and custody information” means information maintained by the Division of Youth Services of the Department of Human Services regarding the status of a juvenile committed to or otherwise placed in the custody of the division from the date of commitment until the juvenile is released from aftercare or custody, whichever is later.

(B) “Juvenile aftercare and custody information” may include the name, address, and phone number of a contact person or an entity responsible for the juvenile;

(18) “Nonconviction information” means arrest information without disposition if an interval of one (1) year has elapsed from the date of arrest and no active prosecution of the charge is pending, as well as all acquittals and all dismissals; and

(19) “Pending information” means criminal history information in some stage of active prosecution or processing.

History. Acts 1993, No. 1109, § 1; 2001, No. 1048, § 1; 2005, No. 1962, § 40; 2009, No. 974, § 2.

A.C.R.C. Notes. Acts 2009, No. 974, § 1, provided: “This act shall be known and may be cited as ‘Juli’s Law’.”

Amendments. The 2005 amendment

inserted present (2), and redesignated the remaining subsections accordingly.

The 2009 amendment inserted present (4) and (12) through (15); deleted former (11); redesignated the remaining subdivisions accordingly; and made minor stylistic changes throughout.

12-12-1002. Penalties.

(a) Upon conviction, any criminal justice agency or official subject to fingerprinting or reporting requirements under this subchapter that knowingly fails to comply with such reporting requirements is guilty of a Class B misdemeanor.

(b)(1) Upon conviction, any person who knowingly releases or discloses to any unauthorized person any information collected and maintained under this subchapter and any person who knowingly obtains information collected and maintained under this subchapter for purposes not authorized by this subchapter is guilty of a Class D felony.

(2) A person convicted for violating subdivision (b)(1) of this section is subject to an additional fine of not more than five hundred thousand dollars (\$500,000).

History. Acts 1993, No. 1109, § 15; 2009, No. 974, § 3.

§ 1, provided: “This act shall be known and may be cited as ‘Juli’s Law’.”

A.C.R.C. Notes. Acts 2009, No. 974,

Amendments. The 2009 amendment

inserted “Upon conviction” in (a); added the (b)(1) designation; in (b)(1), substituted “Upon conviction, any” for “Every” and inserted “collected and maintained under this subchapter”; added (b)(2); and made related and minor stylistic changes.

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

12-12-1003. Scope.

- (a) This subchapter governs the:
 - (1) Collection, maintenance, and dissemination of criminal history information on identifiable individuals charged with or pleading guilty or nolo contendere to, or being found guilty of, criminal offenses under the laws of the State of Arkansas; and
 - (2) Dissemination of juvenile aftercare and custody information.
- (b)(1) Except as provided in subdivision (b)(2) of this section, the Arkansas Crime Information Center may issue rules and implement this subchapter.
- (2) The State Crime Laboratory may promulgate rules to implement the provisions of this subchapter relating to the collection, maintenance, dissemination, removal, or destruction of DNA samples or DNA records.
- (c) The reporting requirements of this subchapter apply to prosecuting attorneys, judges, and law enforcement, court, probation, correction, and parole officials within the limits defined in §§ 12-12-1006 and 12-12-1007.
- (d) This subchapter does not apply to records of traffic offenses, including misdemeanor offenses of driving while intoxicated, maintained by the Department of Finance and Administration.
- (e) Criminal history information collected and maintained by the center is not considered public record information within the intent and meaning of the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1993, No. 1109, § 2; and may be cited as ‘Juli’s Law’.”
2001, No. 1048, § 2; 2009, No. 974, § 4. **Amendments.** The 2009 amendment

A.C.R.C. Notes. Acts 2009, No. 974, added the (b)(1) designation; rewrote § 1, provided: “This act shall be known (b)(1); and added (b)(2).

12-12-1004. Completeness and accuracy.

- (a) The Arkansas Crime Information Center and the State Crime Laboratory shall implement procedures that will, to the maximum extent feasible, ensure the completeness and accuracy of all criminal history information in this state.
- (b) All criminal justice agencies and criminal justice officials shall maintain complete and accurate records, as may be appropriate to their area of operation, and shall report information from the records as required in §§ 12-12-1006 and 12-12-1007.
- (c) The center shall maintain all information reported under this subchapter in a complete and permanent manner to ensure that records are not altered, unlawfully purged, or otherwise lost.
- (d) The State Crime Laboratory shall maintain all DNA samples or DNA records obtained under this subchapter in a complete and perma-

nent manner to ensure that DNA samples or DNA records are not altered, unlawfully purged, or lost.

History. Acts 1993, No. 1109, § 3; 2009, No. 974, § 5.

A.C.R.C. Notes. Acts 2009, No. 974, § 1, provided: "This act shall be known and may be cited as 'Juli's Law'."

Amendments. The 2009 amendment inserted "and the State Crime Laboratory" in (a); inserted "criminal justice" preceding "officials" in (b); inserted "unlawfully" preceding "purged" in (c); added (d); and made minor stylistic changes in (b) and (c).

12-12-1005. Identification Bureau.

(a) The Identification Bureau of the Department of Arkansas State Police shall collect and maintain fingerprint identification records required to be reported by this subchapter.

(b) The Identification Bureau of the Department of Arkansas State Police shall provide arrest and identification information for inclusion in the computerized criminal history file, as specified by the Arkansas Crime Information Center.

(c)(1) Arkansas shall be a single-source state for the submission of fingerprint cards or fingerprint images to the Federal Bureau of Investigation.

(2) All fingerprint cards or fingerprint images, under the provisions of this subchapter, shall be submitted by Arkansas law enforcement agencies to the Identification Bureau of the Department of Arkansas State Police.

History. Acts 1993, No. 1109, § 4; 1997, No. 826, § 4. Unrestricted information, records, immunity from civil liability, § 12-12-1506.

Cross References. Release of criminal history information, authorization of, § 12-12-1507.

12-12-1006. Fingerprinting, DNA sample collection, and photographing.

(a)(1) Immediately following an arrest for an offense, a law enforcement official at the receiving criminal detention facility shall take, or cause to be taken, the fingerprints and a photograph of the arrested person if the offense is a felony or a Class A misdemeanor.

(2) In addition to the requirements of subdivision (a)(1) of this section, a law enforcement official at the receiving criminal detention facility shall take, or cause to be taken, a DNA sample of a person arrested for:

- (A) Capital murder, § 5-10-101;
- (B) Murder in the first degree, § 5-10-102;
- (C) Kidnapping, § 5-11-102;
- (D) Sexual assault in the first degree, § 5-14-124; or
- (E) Sexual assault in the second degree, § 5-14-125.

(b)(1) When the first appearance of a defendant in court is caused by a citation or summons for an offense, a law enforcement official at the receiving criminal detention facility shall take, or cause to be taken, the

fingerprints and a photograph of the arrested person when the offense is a felony or a Class A misdemeanor.

(2) In addition to the requirements of subdivision (b)(1) of this section, if the first appearance of a defendant in court is caused by a citation or summons for a felony offense enumerated in subdivision (a)(2) of this section, the court immediately shall order and a law enforcement officer shall take or cause to be taken a DNA sample of the arrested person.

(c)(1) When felony or Class A misdemeanor charges are brought against a person already in the custody of a law enforcement agency or correctional agency and the charges are separate from the charges for which the person was previously arrested or confined, the law enforcement agency or the correctional agency shall again take the fingerprints and photograph of the person in connection with the new charges.

(2) In addition to the requirements of subdivision (c)(1) of this section, when a felony charge enumerated in subdivision (a)(2) of this section is brought against a person already in the custody of a law enforcement agency or a correctional agency and the felony charge is separate from the charge or charges for which the person was previously arrested or confined, the law enforcement agency or the correctional agency shall take or cause to be taken a DNA sample of the person in connection with the new felony charge unless the law enforcement agency or the correctional agency can verify that the person's DNA record is stored in the State DNA Data Base or CODIS.

(d)(1) When a defendant pleads guilty or nolo contendere to or is found guilty of any felony or Class A misdemeanor charge, the court shall order that the defendant be immediately fingerprinted and photographed by the appropriate law enforcement official.

(2) In addition to the requirements of subdivision (d)(1) of this section, if a defendant pleads guilty or nolo contendere to or is found guilty of a felony charge enumerated in subdivision (a)(2) of this section, the court shall order that the defendant provide a DNA sample to the appropriate law enforcement official unless the appropriate law enforcement official can verify that the defendant's DNA record is stored in the State DNA Data Base or CODIS.

(e)(1) Fingerprints or photographs taken after arrest or court appearance under subsections (a) and (b) of this section or taken from persons already in custody under subsection (c) of this section shall be forwarded to the Identification Bureau of the Department of Arkansas State Police within forty-eight (48) hours after the arrest or court appearance.

(2) Fingerprints or photographs taken under subsection (d) of this section shall be forwarded to the Identification Bureau by the fingerprinting official within five (5) working days after the plea or finding of guilt.

(f) Fingerprint cards or fingerprint images may be retained by the Identification Bureau, and criminal history information may be retained by the central repository for any criminal offense.

(g)(1) A DNA sample provided under this section shall be delivered to the State Crime Laboratory by a law enforcement officer at the law enforcement agency that took the sample in accordance with rules promulgated by the State Crime Laboratory.

(2) A DNA sample taken under this section shall be retained in the State DNA Data Bank established under § 12-12-1106.

(h) A DNA sample provided under this section shall be taken in accordance with rules promulgated by the State Crime Laboratory in consultation with the Department of Arkansas State Police and the Department of Health.

(i) Refusal to be fingerprinted or photographed or refusal to provide a DNA sample as required by this subchapter is a Class B misdemeanor.

(j)(1) A person authorized by this section to take a DNA sample is not criminally liable for taking a DNA sample under this subchapter if he or she takes the DNA sample in good faith and uses reasonable force.

(2) A person authorized by this section to take a DNA sample is not civilly liable for taking a DNA sample if the person acted in good faith, in a reasonable manner, using reasonable force, and according to generally accepted medical and other professional practices.

(k)(1) An authorized law enforcement agency or an authorized correctional agency may employ reasonable force if an individual refuses to submit to a taking of a DNA sample authorized under this subchapter.

(2) An employee of an authorized law enforcement agency or an authorized correctional agency is not criminally or civilly liable for the use of reasonable force described in subdivision (k)(1) of this section.

(l) A person less than eighteen (18) years of age is exempt from all provisions of this section regarding the collection of a DNA sample unless that person is charged by the prosecuting attorney as an adult in circuit court or pleads guilty or nolo contendere to or is found guilty of a felony offense in circuit court.

History. Acts 1993, No. 1109, § 5; 1997, No. 826, § 5; 1997, No. 1231, § 1; 2001, No. 177, § 2; 2001, No. 1712, § 2; 2009, No. 974, § 6.

A.C.R.C. Notes. Acts 2009, No. 974, § 1, provided: "This act shall be known and may be cited as 'Juli's Law'."

Amendments. The 2009 amendment rewrote the section.

Cross References. Fines, § 5-4-201. Fingerprinting and photographing, § 9-27-320.

Imprisonment, § 5-4-401.

12-12-1007. Reporting requirements.

(a) Certain events occurring during the course of a criminal prosecution must be reported for inclusion in a criminal history record. The following events shall be reportable events:

- (1) An arrest;
- (2) The release of a person after arrest without the filing of a charge;
- (3) A decision by a prosecutor not to commence criminal proceedings or to defer or indefinitely postpone prosecution;

(4) An indictment or criminal information or other statement of charges;

(5) The dismissal of an indictment or criminal information, or of any of the charges set out in such indictment or criminal information;

(6) An acquittal, finding of guilt, or other court disposition at or following trial, including dispositions of probationary status;

(7) The terms and conditions of a sentence;

(8) A commitment to a state or local correctional facility;

(9) A commitment to a hospital or other facility as not being criminally responsible or as incompetent to stand trial;

(10) The entry of an appeal to an appellate court;

(11) The judgment of an appellate court;

(12) A pardon, reprieve, commutation, or other change in sentence; and

(13) Other events occurring during the course of the criminal proceedings determined to be reportable.

(b) A reportable event specified in subsection (a) of this section shall be reported by those criminal justice officials or agencies directly responsible for the reportable action, event, or decision.

(c) The form and content of reported information and the method of reporting shall be specified by the Arkansas Crime Information Center and the Administrative Office of the Courts.

(d) Criminal justice agencies shall report criminal history information, whether directly or indirectly, manually or by means of an automated system in accordance with the following provisions:

(1) Information pertaining to the release of a person arrested without the filing of charges as required in subdivision (a)(2) of this section, or to a decision by the prosecutor not to commence criminal proceedings or to defer or postpone prosecution indefinitely as required by subdivision (a)(3) of this section shall be reported within five (5) working days; and

(2) Information pertaining to any other reportable events specified in subdivisions (a)(4)-(13) of this section shall be reported at least monthly.

(e)(1) It shall be the duty of law enforcement officials, prosecuting attorneys, court clerks, and judges to report the arrest tracking number of each defendant in accordance with procedures established by the center.

(2)(A) The arrest tracking number shall be filed with the court clerk at the time an indictment, information, or charge is filed.

(B) In cases in which the defendant has not been arrested at the time of an indictment, information, or charge, the arrest tracking number shall be filed with the court clerk immediately after there is an arrest.

(3) The arrest tracking number shall be in the court's case file before a trial commences or a judgment is entered.

History. Acts 1993, No. 1109, § 6; 1994 (2nd Ex. Sess.), No. 37, § 2; 1994 (2nd Ex. Sess.), No. 38, § 2; 2005, No. 1962, § 41.

Amendments. The 2005 amendment deleted former (e)(1) and redesignated the remaining subdivisions accordingly; and

substituted “in which” for “where” in present (e)(2)(B).

Cross References. Disposition of criminal data to the central repository, § 12-12-1505.

12-12-1008. Dissemination for criminal justice purposes.

(a) Pending information, conviction information, and nonconviction information available through the Arkansas Crime Information Center, plus information obtained through the Interstate Identification Index or from another state’s record system and juvenile aftercare and custody information, shall be disseminated to criminal justice agencies and officials for the administration of criminal justice.

(b) A criminal justice agency shall query the center to obtain the latest updated information prior to disseminating criminal history information, unless the criminal justice agency knows that the center does not maintain the information or is incapable of responding within the necessary time period.

(c) If a criminal justice agency disseminates criminal history information received from the center to another criminal justice agency, the disseminating criminal justice agency shall maintain for at least one (1) year a dissemination log recording the identity of the record subject, the agencies or persons to whom the criminal history information was disseminated, and the date it was provided.

(d) Expunged records will be made available to criminal justice agencies for criminal justice purposes as other laws permit.

(e) A DNA sample or DNA record obtained under this subchapter shall be disseminated only to criminal justice agencies and criminal justice officials for the administration of criminal justice.

History. Acts 1993, No. 1109, § 7; 2001, No. 1048, § 3; 2009, No. 974, § 7. and may be cited as ‘Juli’s Law.’”

A.C.R.C. Notes. Acts 2009, No. 974, § 1, provided: “This act shall be known **Amendments.** The 2009 amendment added (e).

CASE NOTES

ANALYSIS

Dissemination Allowed In Certain Circumstances.
Sovereign Immunity.

Dissemination Allowed In Certain Circumstances.

Physical destruction of records is not contemplated by Arkansas law; therefore, summary judgment was properly granted to the Arkansas Crime Information Center (ACIC) and other parties in an action alleging a violation of an arrestee’s civil

rights because there was no requirement that the ACIC physically destroy expunged records under § 16-90-901(a)(2), and dissemination of the expunged records was allowed to criminal justice agencies for criminal justice purposes under this section. *Jones v. Huckabee*, 369 Ark. 42, 250 S.W.3d 241 (2007).

Sovereign Immunity.

Constable’s suit against Arkansas Crime Information Center (ACIC) was barred under doctrine of sovereign immunity because § 12-12-201 et seq. did not require a law enforcement officer to be

provided with a specific type of access to information, such as via radio transmission; the constable had no clear and legal right to transmit information to, and re-

ceive information from, the ACIC system in the most rapid manner available. *Clowers v. Lassiter*, 363 Ark. 241, 213 S.W.3d 6 (2005).

12-12-1009. Dissemination of conviction information for non-criminal justice purposes.

(a) Conviction information shall be made available for the following noncriminal justice purposes:

(1) To any local, state, or federal governmental agency that requests the conviction information for the enforcement of a local, state, or federal law;

(2) To any entity authorized either by the subject of the record in writing or by state or federal law to receive the conviction information; and

(3) To any federal agency or central repository in another state requesting the conviction information for a purpose authorized by law.

(b) Conviction information disseminated for noncriminal justice purposes under this subchapter shall be used only for the purposes for which it was made available and may not be redisseminated.

(c) Nonconviction information shall not be available under the provisions of this subchapter for noncriminal justice purposes.

(d) No agency or individual shall confirm the existence or nonexistence of criminal history information to any person or organization that would not be eligible to receive the information pursuant to this subchapter.

(e) A local agency may release its own agency records according to its own policy.

(f) The Arkansas State Police Automated Fingerprint Identification System may access and use the National Fingerprint File and Interstate Identification Index as provided by the Federal Bureau of Investigation when the Arkansas Code authorizes a fingerprint-based Federal Bureau of Investigation check for a noncriminal justice purpose and a positive identification based on fingerprints is made.

(g) A DNA sample or DNA record obtained under this subchapter is not available under this subchapter for noncriminal justice purposes.

History. Acts 1993, No. 1109, § 8; 1994 (2nd Ex. Sess.), No. 37, § 3; 1994 (2nd Ex. Sess.), No. 38, § 3; 2005, No. 2213, § 1; 2009, No. 168, § 1; 2009, No. 974, § 8.

A.C.R.C. Notes. Acts 2009, No. 974, § 1, provided: “This act shall be known and may be cited as ‘Juli’s Law’.”

Amendments. The 2005 amendment deleted “nongovernmental” preceding “agency” in (a)(2).

The 2009 amendment by No. 168 added (f).

The 2009 amendment by No. 974 added (g).

CASE NOTES

Sovereign Immunity.

Constable’s suit against Arkansas Crime Information Center (ACIC) was

barred under doctrine of sovereign immunity because § 12-12-201 et seq. did not require a law enforcement officer to be

provided with a specific type of access to information, such as via radio transmission; the constable had no clear and legal right to transmit information to, and re-

ceive information from, the ACIC system in the most rapid manner available. *Clowers v. Lassiter*, 363 Ark. 241, 213 S.W.3d 6 (2005).

12-12-1010. Dissemination for other purposes.

(a)(1) Criminal history information shall be made available to the Governor for purposes of carrying out the Governor's constitutional authority involving pardons, executive clemencies, extraditions, or other duties specifically authorized by law.

(2) Criminal history information may be made available to:

(A) Persons performing research related to the administration of criminal justice, subject to conditions approved by the central repository or the Identification Bureau of the Department of Arkansas State Police to assure the security of the information and the privacy of individuals to whom the criminal history information relates; and

(B) Private contractors providing penitentiary services to a governmental criminal justice agency pursuant to a specific agreement approved by the Arkansas Crime Information Center which limits the use of the criminal history information to the purposes for which given to ensure the security and confidentiality of the criminal history information.

(b)(1) Criminal history information shall be made available according to the provisions of the National Crime Prevention and Privacy Compact, 42 U.S.C. § 14616, as it existed on January 1, 2001.

(2)(A) The General Assembly approves and ratifies the National Crime Prevention and Privacy Compact, 42 U.S.C. § 14616, as it existed on January 1, 2001, and the compact shall remain in effect until legislation is enacted renouncing the compact.

(B) The Director of the Arkansas Crime Information Center, the repository of criminal history records, shall execute, administer, and implement the compact on behalf of the state and may adopt necessary rules, regulations, and procedures for the national exchange of criminal history records for noncriminal justice purposes.

(C) Ratification of the compact does not affect the obligations and responsibilities of the center regarding the dissemination of criminal history records within Arkansas.

History. Acts 1993, No. 1109, § 9; 1999, No. 1330, § 1; 2001, No. 329, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency Management, 24 U. Ark. Little Rock L. Rev. 501.

12-12-1011. Dissemination limited.

(a) Release of criminal history information for noncriminal justice purposes shall be made only by the Identification Bureau of the Department of Arkansas State Police or the central repository, under the limitations contained in § 12-12-1009, and such compiled records will not be released or disclosed for noncriminal justice purposes by other agencies in the state.

(b) Intelligence and investigative files maintained by law enforcement agencies shall be kept separated from criminal history information and shall not be subject to dissemination under the provisions of this subchapter.

History. Acts 1993, No. 1109, § 10.

12-12-1012. Fees for noncriminal justice record searches.

(a)(1)(A) A fee may be charged for providing criminal history information for noncriminal justice purposes.

(B) However, the fee for providing criminal history information may be waived at the request of a:

(i) Local school district, for providing criminal history information concerning a volunteer in a public school program; or

(ii)(a) Nonprofit organization whose purpose is to serve juveniles, for providing criminal history information concerning volunteers to the nonprofit organization.

(b) This exemption shall not be applicable to a child care facility whose owner, operator, or employees are required under § 20-78-606 to apply to the Identification Bureau of the Department of Arkansas State Police for a criminal records check.

(2)(A) The amount of the fee for electronic Internet submission will be determined jointly by the bureau and the central repository and shall not exceed twenty dollars (\$20.00), exclusive of any third-party electronic processing fee charges.

(B) Effective July 1, 2005, the amount of the fee for providing information by means other than the Internet shall be determined jointly by the bureau and the central repository and shall not exceed thirty dollars (\$30.00).

(b)(1) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a State Police Equipment Fund.

(2) Except as provided in subdivision (b)(3) of this section, all fees collected pursuant to this section shall be deposited into the State Treasury as special revenue and credited:

(A) Fifty percent (50%) to the Crime Information System Fund, there to be used for the continued operation and expansion of the automated criminal history system; and

(B) Fifty percent (50%) to the State Police Equipment Fund, there to be used for the continued operation and expansion of the automated fingerprint identification system.

(3) Fees collected under subdivision (a)(2)(B) of this section shall be deposited into the State Treasury as special revenue as follows:

(A) Ten dollars (\$10.00) of each fee collected shall be credited to the Crime Information System Fund; and

(B) The portion of a collected fee that exceeds ten dollars (\$10.00) shall be credited to the State Police Equipment Fund.

(4)(A) Special revenues deposited into the Crime Information System Fund and the State Police Equipment Fund may be used for personal services and operating expenses as provided by law and for conducting criminal background checks for noncriminal justice purposes.

(B) The special revenues unused at the end of any fiscal year shall be carried forward.

History. Acts 1993, No. 1109, § 11; 1995, No. 847, § 1; 1997, No. 447, § 1; 1997, No. 1102, § 3; 2005, No. 1573, § 1; 2005, No. 1962, § 42; 2009, No. 762, § 1.

Amendments. The 2005 amendment by No. 1573 redesignated former (a)(2) and (b)(2) as present (a)(2)(A) and (b)(2)(A); in (a)(2)(A), substituted “the fee for electronic Internet submission” for “such fee” and added “exclusive of any third-party electronic processing fee charges”; added (a)(2)(B) and (b)(2)(B); inserted “Except as provided in subdivision (b)(2) of this section” in (b)(1); and, in (b)(2)(A), substituted “Fees collected under subdivision (a)(2)(A) of this section shall” for “Effective July 1, 1997, such fees

collected shall then” and “identification” for “identification.”

The 2005 amendment by No. 1962, in (b)(1), deleted “All fees shall be deposited immediately in the State Treasury as special revenue to the credit of the State Police Equipment fund” from the beginning and substituted “a State Police Equipment Fund” for “there to be used for the acquisition of an automated fingerprint identification system”; rewrote (b)(2); and made minor stylistic changes throughout.

The 2009 amendment substituted “§ 20-78-606” for “§ 20-78-601 et seq.” in (b).

Effective Dates. Acts 2009, No. 762, § 12, provided: “This act shall be effective September 1, 2009.”

12-12-1013. Right of review and challenge.

(a)(1) A person, upon positive verification of his or her identity, may review criminal history information pertaining to the person compiled and maintained by the Identification Bureau of the Department of Arkansas State Police or the central repository and may challenge the completeness or accuracy of the information.

(2)(A) The criminal history information may be reviewed only by the person or the person’s attorney or other designee authorized in writing by the subject.

(B) A copy of criminal history information maintained in the Arkansas Crime Information Center on the person may be made available to the person or the person’s attorney or other designee authorized in writing by the person.

(C) A request for a copy of any criminal history information maintained in the National Crime Information Center shall be addressed to the Federal Bureau of Investigation.

(b) If the person, after appropriate review, believes that the criminal history information is incorrect or incomplete in any way, he or she may

request an examination and correction of the criminal history information by the agency responsible for the criminal history information.

(c)(1) If it is determined as a result of the challenge that the criminal history information is inaccurate, incomplete, or improperly maintained, the criminal history information shall be appropriately corrected.

(2) Immediately after correction under subdivision (c)(1) of this section, the agency responsible for the criminal history information shall notify every agency or person known to have received the criminal history information within the previous one-year period and provide the agency or person with corrected criminal history information.

(3) A person whose criminal history information has been corrected may ascertain the names of those agencies or individuals known to have received the previously incorrect criminal history information.

(d)(1)(A) Criminal history information that was recorded before August 13, 1993, is subject to the right of review and challenge in accordance with this section.

(B) However, the duty of an agency in searching for criminal history information under subdivision (d)(1)(A) of this section is to make a reasonable search for criminal history information.

(2) An agency does not have a duty under subdivision (d)(1)(A) of this section to provide access to that segment of criminal history information that cannot be located after a reasonable search.

(e) The right of a person to review his or her criminal history information shall not be used by a prospective employer or another person as a means to circumvent procedures or fees for accessing records for noncriminal justice purposes.

History. Acts 1993, No. 1109, § 12; 1997, No. 826, § 6; 2009, No. 974, § 9.

A.C.R.C. Notes. Acts 2009, No. 974, § 1, provided: "This act shall be known and may be cited as 'Juli's Law'."

Amendments. The 2009 amendment substituted "person" for "subject" and

"criminal history information" for "record" and variants throughout; rewrote (d)(1)(B); and made minor stylistic changes.

Cross References. Right of review and challenge, § 12-12-1509.

12-12-1014. Security of criminal history information.

(a) The Arkansas Crime Information Center shall be authorized to develop standards and implement procedures that will, to the maximum extent feasible, ensure the security and confidentiality of criminal history records.

(b) The center shall be authorized to inspect the criminal history records maintained by criminal justice agencies, to evaluate security procedures, and to issue reports on compliance with security standards.

History. Acts 1993, No. 1109, § 13.

12-12-1015. Audit of criminal history records.

(a) The Arkansas Crime Information Center shall be authorized to develop standards and implement a program of audits of all criminal justice agencies that establish, maintain, report, or disseminate criminal history records, to ensure compliance with all provisions of this subchapter.

(b) Audit procedures pertaining to the courts shall be coordinated and implemented through the Administrative Office of the Courts.

History. Acts 1993, No. 1109, § 14.

12-12-1016. Powers and duties of State Crime Laboratory.

In addition to any other power or duty conferred by this subchapter, the State Crime Laboratory shall expand the:

(1) State DNA Data Base established under § 12-12-1105 to store and maintain DNA records generated under this subchapter; and

(2) State DNA Data Bank established under § 12-12-1106 to retain DNA samples provided under this subchapter.

History. Acts 2009, No. 974, § 10.

§ 1, provided: "This act shall be known

A.C.R.C. Notes. Acts 2009, No. 974, and may be cited as 'Juli's Law'."

12-12-1017. Procedures for conduct, disposition, and use of DNA analysis.

(a)(1) The State Crime Laboratory shall promulgate rules governing the procedures to be used in the submission, identification, analysis, storage, and disposition of DNA samples and typing results of DNA samples submitted under this subchapter.

(2) The procedures described in subdivision (a)(1) of this section shall include quality assurance guidelines to ensure that DNA identification records meet standards for laboratories that submit DNA records to the State DNA Data Base.

(b) The typing results of DNA samples shall be securely stored in the State DNA Data Base, and records of testing shall be retained on file with the State Crime Laboratory.

(c)(1) Except as provided in § 12-12-1018, the tests to be performed on each DNA sample shall be used only for law enforcement identification purposes, including the identification of missing persons, and to assist in the recovery or identification of human remains from disasters.

(2) The results of the DNA analysis conducted under this subchapter from a person adjudicated delinquent may be used for any law enforcement agency identification purpose, including adult prosecution.

(3) The detention, arrest, or conviction of a person based on a State DNA Data Base match or State DNA Data Base information is not invalidated if the DNA sample was obtained or placed in the State DNA Data Base by mistake.

- (d)(1) The State Crime Laboratory may contract with a third party for purposes of carrying out any function of this subchapter.
- (2) Any third party contracting to carry out a function of this subchapter is subject to any restriction and requirement of this subchapter that apply to the State Crime Laboratory as well as any additional restriction imposed by the State Crime Laboratory.

History. Acts 2009, No. 974, § 10. § 1, provided: “This act shall be known
A.C.R.C. Notes. Acts 2009, No. 974, and may be cited as ‘Juli’s Law’.”

12-12-1018. Receipt and analysis of DNA samples — Availability of information.

- (a) The State Crime Laboratory shall:
- (1) Receive, store, and perform analyses on DNA samples or contract for DNA typing analysis with a qualified DNA laboratory that meets guidelines as established by the State Crime Laboratory;
- (2) Classify and file the DNA record of identification characteristic profiles of DNA samples submitted under this subchapter; and
- (3) Make information available from the State DNA Data Base as provided in this section.
- (b) The results of the DNA profile of individuals in the State DNA Data Base shall be made available:
- (1) To a criminal justice agency or to an approved crime laboratory that serves a criminal justice agency; or
- (2) To a criminal justice official upon written or electronic request from the criminal justice official and in furtherance of an official investigation of a criminal offense.
- (c) The State Crime Laboratory shall promulgate rules governing the methods of obtaining information from the State DNA Data Base and CODIS and procedures for verification of the identity and authority of the requester.
- (d) The State Crime Laboratory may create a separate population database composed of DNA samples obtained under this subchapter after all personal identification is removed.

History. Acts 2009, No. 974, § 10. § 1, provided: “This act shall be known
A.C.R.C. Notes. Acts 2009, No. 974, and may be cited as ‘Juli’s Law’.”

12-12-1019. Removal and destruction of the DNA record and DNA sample.

- (a) Any person whose DNA record is included in the State DNA Data Base and whose DNA sample is stored in the State DNA Data Bank as authorized by this subchapter may apply to the State Crime Laboratory for removal and destruction of the DNA record and DNA sample if the arrest that led to the inclusion of the DNA record and DNA sample:
- (1) Resulted in a charge that has been resolved by:
- (A) An acquittal;
- (B) A dismissal;

(C) A nolle prosequi;

(D) A successful completion of a preprosecution diversion program or a conditional discharge; or

(E) A conviction of a Class B misdemeanor or Class C misdemeanor; or

(2) Has not resulted in a charge within one (1) year of the date of the arrest.

(b) Except as provided in subsection (c) of this section, the State Crime Laboratory shall remove and destroy a person's DNA record and DNA sample by purging the DNA record and other identifiable information from the State DNA Data Base and the DNA sample stored in the State DNA Data Bank when the person provides the State Crime Laboratory with:

(1) A court order for removal and destruction of the DNA record and DNA sample; and

(2) Either of the following:

(A) A certified copy of:

(i) An order of acquittal;

(ii) An order of dismissal;

(iii) An order nolle prosequi;

(iv) Documentation reflecting a successful completion of a preprosecution diversion program or a conditional discharge; or

(v) A judgment of conviction of a Class B misdemeanor or Class C misdemeanor; or

(B) A court order stating that a charge arising out of the person's arrest has not been filed within one (1) year of the date of the arrest.

(c) The State Crime Laboratory shall not remove or destroy a person's DNA record or DNA sample under subsection (b) of this section if the person had a prior felony or Class A misdemeanor conviction or a pending charge for which collection of a DNA sample is authorized under Arkansas law.

(d) When the State Crime Laboratory removes and destroys a person's DNA record and DNA sample under subsection (b) of this section, the State Crime Laboratory shall request that the person's DNA record be purged from the National DNA Index System.

History. Acts 2009, No. 974, § 10.

§ 1, provided: "This act shall be known

A.C.R.C. Notes. Acts 2009, No. 974, and may be cited as 'Juli's Law'."

SUBCHAPTER 11 — STATE CONVICTED OFFENDER DNA DATA BASE ACT

SECTION.

12-12-1101. Title.

12-12-1102. Purpose.

12-12-1103. Definitions.

12-12-1104. Powers and duties of State Crime Laboratory.

SECTION.

12-12-1105. State DNA Data Base.

12-12-1106. State DNA Data Bank.

12-12-1107. State Crime Laboratory recommendation of additional offenses.

SECTION.	SECTION.
12-12-1108. Procedural compatibility with the Federal Bureau of Investigation.	12-12-1113. Removal and destruction of the DNA record and DNA sample.
12-12-1109. DNA sample required upon adjudication of guilt.	12-12-1114. Confidentiality.
12-12-1110. Procedures of withdrawal, collection, and transmission of DNA samples.	12-12-1115. Prohibition against disclosure.
12-12-1111. Procedures for conduct, disposition, and use of DNA analysis.	12-12-1116. Prohibition against disclosure for pecuniary gain.
12-12-1112. Receipt and analysis of DNA samples — Availability of information.	12-12-1117. Injunctions.
	12-12-1118. Mandatory cost.
	12-12-1119. DNA Detection Fund.
	12-12-1120. Authority of law enforcement officers.

Publisher’s Notes. Former subchapter 11, concerning a deoxyribonucleic acid (DNA) database, was repealed by Acts 1997, No. 737, § 23. The subchapter was derived from the following sources:

- 12-12-1101. Acts 1995, No. 922, § 1.
- 12-12-1102. Acts 1995, No. 922, § 1.
- 12-12-1103. Acts 1995, No. 922, § 2.
- 12-12-1104. Acts 1995, No. 922, § 3.

12-12-1101. Title.

This subchapter shall be known and may be cited as the “State Convicted Offender DNA Data Base Act”.

History. Acts 1997, No. 737, § 1; 2003, No. 1470, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Law Enforcement and Emergency	Management, DNA Detection of Sexual and Violent Offenders Act, 26 U. Ark. Little Rock L. Rev. 431.
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CASE NOTES

Cited: Haynes v. State, 354 Ark. 514, 127 S.W.3d 456 (2003); Polston v. State, 360 Ark. 317, 201 S.W.3d 406 (2005).

12-12-1102. Purpose.

- The General Assembly finds and declares that:
- (1) DNA data banks are an important tool in:
 - (A) Criminal investigations;
 - (B) The exclusion of individuals who are the subjects of criminal investigations or prosecutions; and
 - (C) Deterring and detecting recidivist acts;

(2) Several states have enacted laws requiring persons convicted of certain crimes, especially sexual offenses, to provide genetic samples for DNA profiling;

(3) Moreover, it is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations; and

(4) It is therefore in the best interest of the State of Arkansas to establish a DNA data base and a DNA data bank containing DNA samples submitted by individuals convicted of sex offenses and violent offenses.

History. Acts 1997, No. 737, § 2.

CASE NOTES

Evidence.

Unlike the situation in a prior case, the state presented proof that defendant's undegraded DNA was on a ski mask, found with a pair of gloves, 129 feet from the back door of the house where the rape occurred, and the victim testified that the attacker wore a ski mask and gloves, and that the mask and gloves shown to the

victim by police looked like the ones the victim saw on the victim's attacker, and in conjunction with defendant's inconsistent defense theories, the evidence was sufficient to sustain defendant's conviction. *Haynes v. State*, 354 Ark. 514, 127 S.W.3d 456 (2003), cert. denied, *Haynes v. Arkansas*, 541 U.S. 1047, 124 S. Ct. 2168, 158 L. Ed. 2d 740 (2004).

12-12-1103. Definitions.

As used in this subchapter:

(1) "Adjudication of guilt" and words of similar import mean a plea of guilty, a plea of nolo contendere, a negotiated plea, a finding of guilt by a judge, or a finding of guilt by a jury;

(2) "Administration of criminal justice" means:

(A) Performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders;

(B) Performing criminal identification activities; and

(C) Collecting, maintaining, and disseminating justice information;

(3)(A) "CODIS" means the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic laboratories.

(B) CODIS is derived from Combined DNA Index System;

(4) "Criminal justice agency" means a government agency, or any subunit thereof, which is authorized by law to perform the administration of criminal justice and which allocates more than one-half (½) its annual budget to the administration of criminal justice;

(5)(A) "DNA" means deoxyribonucleic acid.

(B)(i) DNA is located in the cells and provides an individual's personal genetic blueprint.

(ii) DNA encodes genetic information that is the basis of human heredity and forensic identification;

(6)(A) “DNA record” means deoxyribonucleic acid (DNA) identification information stored in the State DNA Data Base or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of deoxyribonucleic acid (DNA) test results.

(B) The DNA record is the result obtained from the DNA typing tests.

(C) The DNA record is composed of the characteristics of a DNA sample which are of value in establishing the identity of individuals.

(D) The results of all DNA identification tests on an individual’s DNA sample are also collectively referred to as the DNA profile of an individual;

(7) “DNA sample” means a blood or tissue sample provided by any person with respect to offenses covered by this subchapter or submitted to the State Crime Laboratory for analysis or storage or both;

(8) “FBI” means the Federal Bureau of Investigation;

(9) “Qualifying offense” means any felony offense as defined in the Arkansas Criminal Code or a sexual offense classified as a misdemeanor as defined by the Arkansas Criminal Code or a repeat offense as defined in this section; and

(10) “Repeat offense” means a second or subsequent adjudication of guilt in a separate criminal action for the commission of any misdemeanor or felony offense involving violence as set forth in Arkansas law, the law of another state, federal law, or military law.

History. Acts 1997, No. 737, § 3; 2003, No. 1087, § 12; 2003, No. 1390, § 5; 2003, No. 1470, § 2; 2005, No. 1962, § 43.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2003, No. 1470.

Subsection (10) of this section was also amended by Acts 2003, No. 1087, which added two subdivisions to read as follows: “(xviii) Computer child pornography - § 5-27-603; and

“(xix) Computer exploitation of a child in the first degree - § 5-27-605 (a);”

Subsection (10) of this section was also amended by Acts 2003, No. 1390, § 5, to read as follows: “(10) ‘Sex offense’ means:

“(A)(i) Rape - § 5-14-103;

“(ii) Sexual indecency with a child - § 5-14-110;

“(iii) Sexual assault in the first degree - § 5-14-124;

“(iv) Sexual assault in the second degree - § 5-14-125;

“(v) Sexual assault in the third degree - § 5-14-126;

“(vi) Sexual assault in the fourth degree - § 5-14-127;

“(vii) Incest - § 5-26-202;

“(viii) Engaging children in sexually explicit conduct for use in visual or print medium - § 5-27-303;

“(ix) Transportation of minors for prohibited sexual conduct - § 5-27-305;

“(x) Employing or consenting to use of child in sexual performance - § 5-27-402;

“(xi) Producing, directing, or promoting sexual performance - § 5-27-403;

“(xii) Promoting prostitution in the first degree - § 5-70-104; and

“(xiii) Stalking - § 5-71-229;

“(B) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in subdivision (10)(A) of this section; or

“(C) A violation of any former law of this state which is substantially equivalent to any of the offenses enumerated in subdivision (10)(A) of this section; and”

The Arkansas Criminal Code referred to in this section is codified at §§ 5-1-101 — 5-1-115, 5-2-201 — 5-2-209, 5-2-301, 5-2-313, 5-2-316, 5-2-401 — 5-2-406, 5-2-501 — 5-2-503, 5-2-601 — 5-2-614, 5-3-101 — 5-3-103, 5-3-201 — 5-3-204, 5-3-301, 5-3-

302, 5-3-401 — 5-3-407, 5-4-101 — 5-4-104, 5-4-201 — 5-4-204, 5-4-301 — 5-4-311, 5-4-401 — 5-4-404, 5-4-501 — 5-4-504, 5-4-601 — 5-4-608, 5-5-101, 5-5-102, 5-10-101 — 5-10-105, 5-11-101 — 5-11-105, 5-12-101 — 5-12-103, 5-13-201 — 5-13-208, 5-13-301, 5-14-101 — 5-14-112, 5-25-101, 5-26-201 — 5-26-203, 5-26-401, 5-27-201 — 5-27-205, 5-36-101 — 5-36-108, 5-37-101, 5-37-201 — 5-37-214, 5-38-101, 5-38-202 — 5-38-205, 5-38-301 —

5-38-303, 5-39-101, 5-39-201 — 5-39-203, 5-52-101 — 5-52-107, 5-53-101 — 5-53-116, 5-54-101 — 5-54-121, 5-60-101, 5-62-101, 5-62-122, 5-70-101 — 5-70-106, 5-71-101, 5-71-201 — 5-71-216, 5-73-101 — 5-73-110, and 12-29-109.

Amendments. The 2005 amendment deleted former (2)(B); redesignated former (2)(A) as present (2) and (2)(A); added present (2)(B) and (2)(C); and made related changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Criminal Law, Computer Crimes, 26 U. Ark. Little Rock L. Rev. 361.

CASE NOTES

ANALYSIS

Construction.
Qualifying Offense.

Construction.

Based on the clear, unambiguous language of § 12-12-1109(a)(2)(A) and subdivision (1) of this section, it was clear that the trial court did not illegally sentence defendant by requiring him to submit to a DNA sample after he received a suspended sentence because whatever conflict § 5-4-101 might have provided, if any, was resolved by the fact that its definitions were used only for Title 5, Chapter 4. *Davis v. State*, 94 Ark. App. 240, 228 S.W.3d 529 (2006).

Qualifying Offense.

In a rape case, although defendant argued that a blood sample had been ille-

gally taken from him when he was incarcerated in 1997 for non-payment of child support, which was not a qualifying offense named in the State Convicted Offenders DNA Database Act, § 12-12-1101 et seq., and it was based on that sample that the state obtained a “hit,” because defendant had submitted to another blood sample in 2000 when incarcerated for burglary, pursuant to § 12-12-1109(a), the appellate court found that the state met its burden of proof in establishing that the DNA evidence was admissible, pursuant to the inevitable discovery doctrine. *Haynes v. State*, 354 Ark. 514, 127 S.W.3d 456 (2003), cert. denied, *Haynes v. Arkansas*, 541 U.S. 1047, 124 S. Ct. 2168, 158 L. Ed. 2d 740 (2004).

Cited: *Polston v. State*, 360 Ark. 317, 201 S.W.3d 406 (2005).

12-12-1104. Powers and duties of State Crime Laboratory.

In addition to any other powers and duties conferred by this subchapter, the State Crime Laboratory shall:

(1) Be responsible for the policy management and administration of the state DNA identification record system to support law enforcement agencies and other criminal justice agencies;

(2) Promulgate rules and regulations to carry out the provisions of this subchapter; and

(3) Provide for liaison with the Federal Bureau of Investigation and other criminal justice agencies in regard to the state’s participation in CODIS or in any DNA data base designated by the laboratory.

History. Acts 1997, No. 737, § 4.

12-12-1105. State DNA Data Base.

(a)(1) There is established the State DNA Data Base.

(2) The State Crime Laboratory shall administer the data base and provide DNA records to the Federal Bureau of Investigation for storage and maintenance in CODIS.

(b) The data base shall have the capability provided by computer software and procedures administered by the laboratory to store and maintain DNA records related to:

(1) Crime scene evidence and forensic casework;

(2) Convicted offenders and juveniles adjudicated delinquent who are required to provide a DNA sample under this subchapter;

(3) Offenders who were required to provide a DNA sample under former § 12-12-1101 et seq.;

(4) Anonymous DNA records used for forensic validation, quality control, or establishment of a population statistics database;

(5) Unidentified persons or body parts;

(6) Missing persons and biological relatives of missing persons; and

(7) Persons arrested for a felony offense who are required to provide a DNA sample under § 12-12-1006.

History. Acts 1997, No. 737, § 5; 2003, No. 1470, § 3; 2009, No. 974, §§ 1, 11.

A.C.R.C. Notes. Former § 12-12-1101 et seq., referred to in subdivision (b)(3) of this section, was derived from Acts 1995, No. 922, §§ 1-3, which was subsequently repealed by Acts 1997, No. 737, § 23.

Acts 2009, No. 974, § 1, provided: "This

act shall be known and may be cited as 'Juli's Law'."

Amendments. The 2009 amendment substituted "Missing persons and biological relatives" for "Relatives" in (b)(6); added (b)(7); and made minor stylistic changes throughout.

CASE NOTES**Constitutionality.**

Supreme Court of Arkansas adopted the totality of the circumstances test and determined that the DNA collection statute did not constitute an unreasonable search and seizure under the Fourth Amendment; a convicted felon has a diminished

expectation of privacy in the penal context, a blood test does not constitute an unduly extensive imposition on an individual's privacy and bodily integrity, and the state's interest in solving crimes is substantial. *Polston v. State*, 360 Ark. 317, 201 S.W.3d 406 (2005).

12-12-1106. State DNA Data Bank.

(a) There is established the State DNA Data Bank.

(b) It shall serve as the repository of DNA samples collected under this subchapter.

History. Acts 1997, No. 737, § 6.

12-12-1107. State Crime Laboratory recommendation of additional offenses.

(a) The State Crime Laboratory may recommend to the General Assembly that it enact legislation for the inclusion of additional

offenses for which DNA samples shall be taken and otherwise subjected to the provisions of this subchapter.

(b) In determining whether to recommend additional offenses, the laboratory shall consider those offenses for which DNA testing will have a substantial impact on the detection and identification of sex offenders and violent offenders.

History. Acts 1997, No. 737, § 7.

12-12-1108. Procedural compatibility with the Federal Bureau of Investigation.

The DNA identification system as established by the State Crime Laboratory shall be compatible with the procedures specified by the Federal Bureau of Investigation, including use of comparable test procedures, laboratory equipment, supplies, and computer software.

History. Acts 1997, No. 737, § 8.

12-12-1109. DNA sample required upon adjudication of guilt.

(a) A person who is adjudicated guilty for a qualifying offense on or after August 1, 1997, shall have a DNA sample drawn as follows:

(1)(A) A person who is adjudicated guilty for a qualifying offense and sentenced to a term of confinement for that qualifying offense shall have a DNA sample drawn upon intake to a prison, jail, or any other detention facility or institution.

(B) If the person is already confined at the time of sentencing, the person shall have a DNA sample drawn immediately after the sentencing;

(2)(A) A person who is adjudicated guilty for a qualifying offense shall have a DNA sample drawn as a condition of any sentence in which disposition will not involve an intake into a prison, jail, or any other detention facility or institution.

(B) Unless otherwise ordered by the court, the agency supervising the convicted offender shall determine the time and collection of the DNA sample;

(3) A person who is acquitted on the grounds of mental disease or defect of the commission of a qualifying offense and committed to an institution or other facility shall have a DNA sample drawn upon intake to that institution or other facility; and

(4) Under no circumstance shall a person who is adjudicated guilty for a qualifying offense be released in any manner after this disposition unless a DNA sample has been drawn.

(b) A person who has been adjudicated guilty for a qualifying offense before August 1, 1997, and who is still serving a term of confinement in connection therewith on August 1, 1997, shall not be released in any manner prior to the expiration of his or her maximum term of confinement unless and until a DNA sample has been drawn.

(c) All DNA samples taken pursuant to this section shall be taken in accordance with regulations promulgated by the State Crime Laboratory in consultation with the Department of Correction, the Department of Community Correction, the Department of Human Services, and the Administrative Office of the Courts.

(d)(1) When the state accepts a person from another state under any interstate compact or under any other reciprocal agreement with any county, state, or federal agency or any other provision of law, whether or not the person is confined or released, the acceptance is conditional on the person's providing a DNA sample if the person was convicted of an offense in any other jurisdiction which would be considered a qualifying offense as defined in § 12-12-1103(9) if committed in this state or if the person was convicted of an equivalent offense in any other jurisdiction.

(2) The person shall provide the DNA sample in accordance with the rules of the custodial institution or supervising agency.

(e)(1) The requirements of this subchapter are mandatory and apply regardless of whether or not a court advises a person that a DNA sample must be provided to the State DNA Data Base and State DNA Data Bank as a condition of probation or parole.

(2) A person who has been sentenced to death or life without the possibility of parole or to any life or indeterminate term of incarceration is not exempt from the requirements of this subchapter.

(3) Any person subject to this subchapter who has not provided a DNA sample for any reason, including the person's release prior to July 16, 2003, an oversight, or because of the person's transfer from another jurisdiction, shall give a DNA sample for inclusion in the data base after being notified by the supervising agency.

(4) In the event that a person's DNA sample is not adequate for any reason, the person shall provide another DNA sample for analysis.

History. Acts 1997, No. 737, § 9; 2001, No. 218, § 1; 2003, No. 1265, § 6[5]; 2003, No. 1470, § 4.

A.C.R.C. Notes. Acts 2003, No. 1265 did not contain a Section 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency

Management, 24 U. Ark. Little Rock L. Rev. 501.

CASE NOTES

ANALYSIS

Constitutionality.
Illustrative Cases.

Constitutionality.

Supreme Court of Arkansas adopted the totality of the circumstances test and de-

termined that the DNA collection statute did not constitute an unreasonable search and seizure under the Fourth Amendment; a convicted felon has a diminished expectation of privacy in the penal context, a blood test does not constitute an unduly extensive imposition on an individual's privacy and bodily integrity, and

the state's interest in solving crimes is substantial. *Polston v. State*, 360 Ark. 317, 201 S.W.3d 406 (2005).

Illustrative Cases.

In a rape case, although defendant argued that a blood sample had been illegally taken from him when he was incarcerated in 1997 for non-payment of child support, which was not a qualifying offense named in the State Convicted Offenders DNA Database Act, § 12-12-1101 et seq., and it was based on that sample that the state obtained a "hit," because defendant had submitted to another blood sample in 2000 when incarcerated for burglary, pursuant to subsection (a) of this section, the appellate court found that the state met its burden of proof in establish-

ing that the DNA evidence was admissible, pursuant to the inevitable discovery doctrine. *Haynes v. State*, 354 Ark. 514, 127 S.W.3d 456 (2003), cert. denied, *Haynes v. Arkansas*, 541 U.S. 1047, 124 S. Ct. 2168, 158 L. Ed. 2d 740 (2004).

Based on the clear, unambiguous language of subdivision (a)(2)(A) of this section and § 12-12-1103(1), it was clear that the trial court did not illegally sentence defendant by requiring him to submit to a DNA sample after he received a suspended sentence because whatever conflict § 5-4-101 might have provided, if any, was resolved by the fact that its definitions were used only for Title 5, Chapter 4. *Davis v. State*, 94 Ark. App. 240, 228 S.W.3d 529 (2006).

12-12-1110. Procedures of withdrawal, collection, and transmission of DNA samples.

(a)(1)(A) Each DNA sample required to be taken pursuant to § 12-12-1109 from persons who are incarcerated shall be taken by the agency supervising the convicted offender.

(B) DNA samples from persons who are not committed or sentenced to a term of confinement shall be drawn at another facility to be specified by the sentencing court.

(C) Only those individuals qualified to draw DNA samples in a medically approved manner shall draw a DNA sample to be submitted for analysis.

(2) In addition to the DNA sample, a right thumbprint shall be taken from the person from whom the DNA sample is drawn for the exclusive purpose of verifying the identity of the person.

(3) The agency or institution having custody or control or the agency providing supervision of persons convicted or adjudicated delinquent for qualifying offenses, as appropriate, is authorized to contract with third parties to provide for the collection of the DNA samples.

(b) The DNA sample and the right thumbprint provided in subdivision (a)(2) of this section shall be delivered to the State Crime Laboratory in accordance with guidelines established by the laboratory.

(c)(1) Persons authorized by this section to draw blood shall not be criminally liable for drawing a DNA sample and transmitting the DNA sample pursuant to this subchapter if they perform these activities in good faith.

(2) Persons authorized to draw blood shall not be civilly liable for such activities when the persons acted in a reasonable manner and according to generally accepted medical and other professional practices.

(d)(1) Authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to submit to DNA testing authorized under this subchapter.

(2) No such employee shall be criminally or civilly liable for the use of reasonable force.

(e)(1) Any person who refuses to provide a DNA sample required by this subchapter will receive no further sentence reduction for meritorious good time until such time as a sample is provided, and the Department of Correction shall notify the Parole Board regarding the refusal.

(2) Any person who is subject to this subchapter who knowingly refuses to provide the DNA sample after receiving notification of the requirement to provide a DNA sample shall be guilty of a Class D felony.

History. Acts 1997, No. 737, § 10;
2003, No. 1470, § 4.

Cross References. Fines, § 5-4-201.
Imprisonment, § 5-4-401.

12-12-1111. Procedures for conduct, disposition, and use of DNA analysis.

(a)(1) The State Crime Laboratory shall adopt rules governing the procedures to be used in the submission, identification, analysis, storage, and disposition of DNA samples and typing results of DNA samples submitted under this subchapter.

(2) These procedures shall also include quality assurance guidelines to ensure that DNA identification records meet standards for laboratories which submit DNA records to the State DNA Data Base.

(b) The typing results of DNA samples shall be securely stored in the data base, and records of testing shall be retained on file with the State Crime Laboratory consistent with the procedures established by the Federal Bureau of Investigation.

(c)(1) Except as otherwise provided in § 12-12-1112, the tests to be performed on each DNA sample shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons.

(2) The results of the analysis conducted pursuant to this subchapter from a person adjudicated delinquent may be used for any law enforcement agency identification purpose, including adult prosecution.

(3) The detention, arrest, or conviction of a person based on a database match or database information is not invalidated if the DNA sample was obtained or placed in the database by mistake.

(d)(1) The State Crime Laboratory is authorized to contract with third parties for purposes of this subchapter.

(2) Any third party contracting to carry out the functions of this subchapter shall be subject to the same restrictions and requirements of this subchapter, insofar as applicable, as the State Crime Laboratory as well as any additional restrictions imposed by the State Crime Laboratory.

History. Acts 1997, No. 737, § 11;
2003, No. 1470, § 4.

12-12-1112. Receipt and analysis of DNA samples — Availability of information.**(a) RECEIPT OF DNA SAMPLES BY STATE CRIME LABORATORY.**

(1) The State Crime Laboratory shall receive DNA samples, store, perform analysis or contract for DNA typing analysis with a qualified DNA laboratory that meets the guidelines as established by the State Crime Laboratory, classify and file the DNA record of identification characteristic profiles of DNA samples submitted under this subchapter, and make such information available from the State DNA Database as provided in this section.

(2) The State Crime Laboratory may contract out the storage of DNA typing analysis and may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the State Crime Laboratory.

(b) The results of the DNA profile of individuals in the database shall be made available:

(1) To criminal justice agencies or to approved crime laboratories which serve these criminal justice agencies; or

(2) Upon written or electronic request and in furtherance of an official investigation of a criminal offense.

(c) **METHODS OF OBTAINING INFORMATION.** The State Crime Laboratory shall adopt rules governing the methods of obtaining information from the database and CODIS and procedures for verification of the identity and authority of the requester.

(d) POPULATION DATABASE.

(1) The State Crime Laboratory may create a separate population database composed of DNA samples obtained under this subchapter after all personal identification is removed.

(2) The State Crime Laboratory may share or disseminate the population database with other criminal justice agencies or crime laboratories that serve to assist the State Crime Laboratory with statistical databases.

(3) The population database may be made available to and searched by other agencies participating in the CODIS system.

History. Acts 1997, No. 737, § 12.

CASE NOTES

Cited: Polston v. State, 360 Ark. 317, 201 S.W.3d 406 (2005).

12-12-1113. Removal and destruction of the DNA record and DNA sample.

(a)(1) Any person whose DNA record has been included in the State DNA Database and whose DNA sample is stored in the State DNA Databank may apply to any circuit court for removal and destruction of the DNA record and DNA sample on the grounds that the adjudication

of guilt that resulted in the inclusion of the person's DNA record in the database or the inclusion of the person's DNA sample in the databank has been reversed and the case dismissed.

(2) A copy of the application for removal and destruction shall be served on the prosecutor for the county in which the adjudication of guilt was obtained not less than twenty (20) days prior to the date of the hearing on the application.

(3) A certified copy of the order reversing and dismissing the adjudication of guilt shall be attached to an order removing and destroying the DNA record and DNA sample insofar as its inclusion rests upon that adjudication of guilt.

(b)(1) Upon receipt of an order of removal and destruction and unless otherwise provided, the State Crime Laboratory shall purge the DNA record and other identifiable information from the database and the DNA sample stored in the databank covered by the order.

(2) If the entry in the database reflects more than one (1) adjudication of guilt, that entry shall not be removed and destroyed unless and until the person has obtained an order of removal and destruction for each adjudication of guilt on the grounds contained in subsection (a) of this section.

(3) If one (1) of the bases for inclusion in the database was other than adjudication of guilt, that entry shall not be subject to removal and destruction.

History. Acts 1997, No. 737, § 13.

12-12-1114. Confidentiality.

(a) All DNA profiles and samples submitted to the State Crime Laboratory pursuant to this subchapter shall be treated as confidential except as otherwise provided in this subchapter.

(b) All DNA records and DNA samples submitted to the laboratory pursuant to this subchapter are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1997, No. 737, § 14; 2003, No. 1470, § 5.

12-12-1115. Prohibition against disclosure.

(a)(1) Any person who by virtue of employment or official position or any person contracting to carry out any functions under this subchapter, including any officers, employees, and agents of this contractor who has possession of or access to individually identifiable DNA information contained in the State DNA Database or State DNA Databank shall not disclose the information in any manner to any person or agency not entitled to receive it, knowing that the person is not entitled to receive it.

(2) No person shall obtain individually identifiable DNA information from the database or the databank without authorization to do so.

(3) In order to maintain the computer system security of the State Crime Laboratory, database, and databank program, the computer software, and database structures used by the laboratory to implement this subchapter are confidential.

(b) Any person who knowingly violates this section is guilty of a Class D felony.

History. Acts 1997, No. 737, § 15; 2003, No. 1470, § 5; 2009, No. 974, § 12.

A.C.R.C. Notes. Acts 2009, No. 974, § 1, provided: "This act shall be known and may be cited as 'Juli's Law'."

Amendments. The 2009 amendment substituted "Class D felony" for "Class A misdemeanor" in (b).

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

12-12-1116. Prohibition against disclosure for pecuniary gain.

Upon conviction, a person is guilty of a Class D felony if the person:

(1) Possesses or accesses individually identifiable DNA information contained in the State DNA Database or State DNA Databank;

(2) Carries out functions of this subchapter as an employee, official, or contractor, including an officer, employee, or agent of a contractor; and

(3) For pecuniary gain of the person or another person, knowingly discloses individually identifiable DNA information contained in the State DNA Database or State DNA Databank in any manner to a person or agency not authorized to receive the individually identifiable DNA information contained in the State DNA Database or State DNA Databank.

History. Acts 1997, No. 737, § 16; 2009, No. 974, § 13.

A.C.R.C. Notes. Acts 2009, No. 974, § 1, provided: "This act shall be known and may be cited as 'Juli's Law'."

Amendments. The 2009 amendment rewrote the section.

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

12-12-1117. Injunctions.

The State Crime Laboratory or any other aggrieved individual or agency may institute an action in a court of competent jurisdiction against any person, agency, or organization to enjoin any criminal or noncriminal justice agency, organization, or individual from violating the provisions of this subchapter or to compel the agency, organization, or person to comply with the provisions of this subchapter.

History. Acts 1997, No. 737, § 17.

12-12-1118. Mandatory cost.

(a) Unless finding that undue hardship would result, the sentencing court shall assess at the time of sentencing a mandatory fine of not less than two hundred fifty dollars (\$250) on any person who is required to provide a DNA sample under this subchapter.

(b) The fine provided in subsection (a) of this section and collected in circuit court, district court, city court, shall be remitted by the tenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the DNA Detection Fund as established by § 12-12-1119.

History. Acts 1997, No. 737, § 18;
2003, No. 1765, § 5.

12-12-1119. DNA Detection Fund.

(a) There is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “DNA Detection Fund”.

(b) This fund shall consist of special revenues collected pursuant to § 12-12-1118, there to be used by the State Crime Laboratory for the administration of this subchapter.

History. Acts 1997, No. 737, § 19.

Cross References. DNA Detection Fund, § 19-6-447.

12-12-1120. Authority of law enforcement officers.

Nothing in this subchapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store, and utilize DNA samples for law enforcement purposes.

History. Acts 1997, No. 737, § 20.

SUBCHAPTER 12 — VICTIM NOTIFICATION SYSTEM

SECTION.

12-12-1201. Authorization.

12-12-1202. Information provided.

12-12-1201. Authorization.

The Arkansas Crime Information Center is authorized to develop and operate a computerized victim notification system which shall provide:

(1) A mechanism for victims of criminal offenses or the victim’s next of kin to access information about proceedings in the criminal justice and corrections systems by use of a twenty-four-hour toll-free in-watts telephone service; and

(2) Automatic notification by computerized telephone service to the victims of criminal offenses or the victim’s next of kin about an inmate’s custody status, including the location of the inmate.

History. Acts 1997, No. 1250, § 1.

12-12-1202. Information provided.

(a) A victim notification may be accomplished by means of the computerized victim notification system established under § 12-12-1201 if pursuant to:

- (1) Section 12-29-114, pertaining to escape;
- (2) Section 16-21-106, pertaining to assistance to victims and witnesses of crimes;
- (3) Section 16-93-204, pertaining to executive clemency;
- (4) Section 16-93-206, pertaining to transfer hearings;
- (5) Section 16-93-702, pertaining to parole; or
- (6) Section 16-97-102, pertaining to sentencing.

(b) The computerized victim notification system established under § 12-12-1201 shall also include information about an inmate's custody status in regard to furloughs, work release, and community correction programs.

History. Acts 1997, No. 1250, § 2; deleted former (a)(6); redesignated former 2005, No. 1962, § 44. (a)(7) as present (a)(6); and substituted

Amendments. The 2005 amendment "correction" for "punishment" in (b).

SUBCHAPTER 13 — SEX OFFENDERS ASSESSMENT**SECTION.**

12-12-1301 — 12-12-1303. [Repealed.]

12-12-1301 — 12-12-1303. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2003 (2d Ex. Sess.), No. 21, § 13. The subchapter was derived from the following sources:

12-12-1301. Acts 1999, No. 1353, § 15; 2001, No. 1650, § 5; 2001, No. 1740, § 1.

12-12-1302. Acts 1999, No. 1353, § 15; 2001, No. 1740, § 2.

12-12-1303. Acts 1999, No. 1353, § 15; 2001, No. 1740, § 3.

For current law, see the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

SUBCHAPTER 14 — TASK FORCE ON RACIAL PROFILING**SECTION.**

12-12-1401. Definition.

12-12-1402. Prohibition on racial profiling.

SECTION.

12-12-1403. Policies.

12-12-1404. Training.

12-12-1405. Racial profiling hotline.

12-12-1401. Definition.

(a) As used in this subchapter, "racial profiling" means the practice of a law enforcement officer's relying to any degree on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.

(b) “Racial profiling” does not include reliance on the criteria in combination with other identifying factors when the law enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect and the description is thought to be reliable and locally relevant.

History. Acts 2003, No. 1207, § 1.

12-12-1402. Prohibition on racial profiling.

(a) No member of the Department of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department, a county sheriff’s department, or a municipal police department, constable, or any other law enforcement officer of this state shall engage in racial profiling.

(b) The statements of policy and definitions contained in this subchapter shall not be construed or interpreted to be contrary to the Arkansas Rules of Criminal Procedure or the United States Constitution or the Arkansas Constitution.

History. Acts 2003, No. 1207, § 2; **Amendments.** The 2005 amendment 2005, No. 2136, § 3. rewrote (b).

12-12-1403. Policies.

(a) The Department of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department, all county sheriffs’ departments, municipal police departments, constables, and all other law enforcement agencies of this state shall adopt a written policy that:

- (1) Prohibits racial profiling as defined in § 12-12-1401;
- (2) Requires that law enforcement officers have reasonable suspicion prior to a stop, arrest, or detention;
- (3) Defines reasonable suspicion to ensure that individuals are stopped for valid reasons and that race, ethnicity, national origin, or religion is not the basis for stops for violations for which nongroup members would not be stopped;
- (4) Requires law enforcement officers to identify themselves by full name and jurisdiction and state the reason for the stop and when possible present written identification;
- (5) Provides for a systematic review process by supervising personnel within a department or law enforcement agency for investigating allegations of racial profiling to determine whether any officers of the law enforcement agency have a pattern of stopping or searching persons, and if the review reveals a pattern, requires an investigation to determine whether a trend is present indicating that an officer may be using race, ethnicity, national origin, or religion as a basis for investigating other violations of criminal law;
- (6) When a supervisor or other reviewer has detected a pattern of racial profiling, provides timely assistance, remediation, or discipline

for individual law enforcement officers who have been found to be profiling by race, ethnicity, national origin, or religion;

(7) Ensures that supervisors will not retaliate against officers who report racial profiling by others; and

(8) Provides standards for the use of in-car audio and visual equipment, including the duration for which the recordings are preserved.

(b)(1) Each law enforcement agency shall include a copy of the law enforcement agency's policy in the annual report that the law enforcement agency submits to the Division of Legislative Audit.

(2) The Division of Legislative Audit shall submit to the Attorney General the name of any law enforcement agency that fails to comply with subdivision (b)(1) of this section, and the Attorney General shall take such action as may be necessary to enforce this section.

(3) The Division of Legislative Audit shall forward to the Attorney General a copy of each law enforcement agency's policy received by the Division of Legislative Audit. The Attorney General shall review each law enforcement agency's policy to ensure that the law enforcement agency's policy meets the standards required by law.

(c)(1) Each law enforcement agency may promote public awareness of the law enforcement agency's efforts to comply with the mandates of this section.

(2) In addition, each law enforcement agency shall make available for public inspection a copy of the law enforcement agency's policy.

History. Acts 2003, No. 1207, § 3; The 2007 amendment added (b)(2) and 2005, No. 2136, § 4; 2007, No. 1048, § 2; (3) and made related changes; and added 2009, No. 165, § 8. (c).

A.C.R.C. Notes. As enacted by Acts 2003, No. 1207, § 3, subsection (a) of this section began: "Not later than January 1, 2004." The 2009 amendment, in (b)(3), inserted "law enforcement agency's" in three places and made a stylistic change.

Amendments. The 2005 amendment added (b).

12-12-1404. Training.

(a) Each law enforcement agency shall provide annual training to all officers that:

(1) Emphasizes the prohibition against racial profiling;

(2) Ensures that operating procedures adequately implement the prohibition against racial profiling and that the law enforcement agency's law enforcement personnel have copies of, understand, and follow the operating procedures; and

(3) Includes foreign language instruction, if possible, to ensure adequate communication with residents of a community.

(b) The course or courses of instruction and the guidelines shall stress understanding and respect for racial, ethnic, national, religious, and cultural differences and development of effective and appropriate methods of carrying out law enforcement duties.

(c)(1)(A) The Arkansas Commission on Law Enforcement Standards and Training shall adopt an initial training module concerning diversity and racial sensitivity for recruits and officers.

(B) The commission shall also adopt a training module for biennial recertification for all recruits and officers who have completed the initial training module.

(2) An officer currently employed by any law enforcement agency shall be required to complete the initial training module described in subdivision (c)(1)(A) of this section before June 30, 2006.

(d)(1) By January 1, 2006, the commission shall promulgate rules that will set significant standards for all training required in this section.

(2) The commission may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) The commission may review and recommend changes to the racial profiling policy of any law enforcement agency.

(4) Upon request, the racial profiling policy of any law enforcement agency shall be made available to the commission for the purpose described in subdivision (d)(3) of this section.

(5) The commission may establish a toll-free hotline and an email address to receive complaints concerning racial profiling.

History. Acts 2003, No. 1207, § 4; **Amendments.** The 2005 amendment 2005, No. 2136, § 5. added (c) and (d).

12-12-1405. Racial profiling hotline.

(a)(1) The Attorney General shall establish and publish procedures to receive complaints concerning racial profiling.

(2) The procedures shall include the operation of a toll-free hotline and may include procedures to receive written complaints through the mail, email, or facsimile.

(b) The Attorney General shall maintain statewide statistics on complaints received concerning racial profiling.

(c) The Attorney General annually shall report statewide statistics on complaints concerning racial profiling received under this section during a year no later than October 1 of the next year to the Legislative Council and the Task Force on Racial Profiling.

(d) If the Attorney General suspects that a violation of law has occurred, the Attorney General shall refer the matter to the appropriate prosecuting attorney or other appropriate legal authority.

History. Acts 2009, No. 768, § 1.

SUBCHAPTER 15 — ARKANSAS STATE CRIMINAL RECORDS ACT

SECTION.

- 12-12-1503. Definitions.
- 12-12-1504. Information required — Exceptions.
- 12-12-1505. Disposition of data to the central repository.
- 12-12-1506. Unrestricted information — Records — Immunity from civil liability.
- 12-12-1507. Administration.

SECTION.

- 12-12-1508. Access to information — Fee.
- 12-12-1509. Right of review and challenge.
- 12-12-1510. Fees.
- 12-12-1511. Penalty.
- 12-12-1512. Rules and regulations.
- 12-12-1513. Status as a registered sex offender.

Effective Dates. Acts 2003 (1st Ex. Sess.), No. 63, § 12: May 13, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the dissemination of complete, accurate, and timely criminal history information is necessary for the protection of the people of the State of Arkansas and this act is needed to provide that necessary access to the criminal history information. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 1573, § 6: Apr. 5, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the dissemination of complete, accurate, and timely criminal history information is necessary for the protection of the people of the State of Arkansas; and that this act is needed to provide necessary access to criminal history information. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If

the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 1941, § 2: Apr. 11, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that exclusion of persons who are registered sex offenders or are required to register as a sex offender from certain employment or licensure is necessary for the protection of children, elderly, and developmentally disabled persons of the State of Arkansas; that this act will allow the disqualification of registered sex offenders or persons required to register as a sex offender from certain employment or licensure; and that this act is immediately necessary in order to allow state agencies and other entities to disqualify a registered sex offender or person required to register as a sex offender from licensing or employment. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-12-1501. Title.

This subchapter shall be known as the "Arkansas State Criminal Records Act".

History. Acts 2003 (1st Ex. Sess.), No. 63, § 1.

12-12-1502. Intent.

(a) It is the intent of this subchapter to:

(1) Provide one (1) source for obtaining the most accurate and complete criminal history information;

(2) Allow dissemination of criminal history information to employers, professional licensing boards, and any entity mandated by Arkansas law to perform background checks through the Department of Arkansas State Police pertaining to all felony arrest information and all conviction information;

(3) With the written consent of the student or prospective student, allow electronic dissemination of criminal history information to an institution of higher education for a student enrolled in, and a prospective student seeking enrollment in, a medical, nursing, pharmacy, or other health-related course of study at an institution of higher education located in Arkansas; and

(4) Allow dissemination of criminal history information to the Arkansas Public Defender Commission for use in defense of criminal defendants. Expunged and sealed criminal history information shall be released to the commission only for the purposes of use for impeachment of witnesses.

(b)(1) The department shall be the agency responsible for the dissemination of criminal history information under this subchapter.

(2) The Arkansas Crime Information Center may disseminate criminal history information as authorized by law.

(c) Felony arrest information that has had a disposition of acquittal, dismissal, or nolle prosequi entered into the central repository shall not be released under this subchapter.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 2; 2005, No. 1573, § 2; 2005, No. 2213, § 2; 2007, No. 1586, § 1.

Amendments. The 2005 amendment by No. 1573 inserted “and any entity mandated by Arkansas law to perform background checks through the Department of Arkansas State Police” in (a)(2).

The 2005 amendment by No. 2213 added (a)(3).

The 2007 amendment added (a)(4), and made related changes.

Cross References. Arkansas Crime Information Center Supervisory Board, duties and responsibilities, § 12-12-203.

Department of Arkansas State Police, duties, powers, restrictions, municipal police barred from certain highways, § 12-8-106.

Registration, certification, and licensing for criminal offenders, § 17-1-103.

12-12-1503. Definitions.

As used in this subchapter:

(1) “Administration of criminal justice” means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or crimi-

nal offenders, including criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(2)(A) "Arrest records" or "arrest information" means felony arrest information in which conviction or disposition information has not been entered into the central repository.

(B) "Arrest records" or "arrest information" does not include:

(i) Misdemeanor arrest information;

(ii) Felony arrest information that has a disposition of acquittal, dismissal, or nolle prosequi entered into the central repository; or

(iii) Felony arrest information if more than three (3) years have elapsed from the date of the felony arrest;

(3) "Bureau" means the Identification Bureau of the Department of Arkansas State Police, which may maintain fingerprint card files and other identification information on individuals;

(4) "Central repository" means the Arkansas Crime Information Center, which collects, maintains, and disseminates criminal history information;

(5)(A) "Conviction information" means criminal history information disclosing that a person has pleaded guilty or nolo contendere to or was found guilty of a criminal offense in a court of law, together with sentencing information.

(B) "Conviction information" does not include a sealed or expunged record;

(6)(A) "Criminal history information" means a record compiled by the central repository or the bureau on an individual consisting of names, identification data, notations of arrests, detentions, indictments, informations, or other formal criminal charges obtained from criminal justice agencies, including any dispositions of the charges, as well as notations on correctional supervision and release.

(B) "Criminal history information" does not include the following:

(i) Fingerprint records on individuals not involved in the criminal justice system, juvenile records, or driver history records;

(ii) Original records of entry maintained by criminal justice agencies, court indices, records of public judicial proceedings, court decisions, opinions, and information disclosed during public judicial proceedings; and

(iii) Records when the release is made by the specific court, law enforcement agency, or prosecutor that created the records.

(C) Subdivision (5) of this section does not prohibit the release of information by the specific agency that created the record;

(7) "Criminal justice agency" means a government agency or any subunit thereof that is authorized by law to perform the administration of criminal justice and that allocates more than one-half (1/2) of its annual budget to the administration of criminal justice;

(8)(A) "Disposition" means information describing the outcome of any criminal charges, including notations that law enforcement officials have elected not to refer the matter to a prosecutor, that a prosecutor has elected not to begin criminal proceedings, or that proceedings have been indefinitely postponed.

(B) "Disposition" includes acquittals, dismissals, probations, charges pending due to mental disease or defect, guilty pleas, nolle prosequi, nolo contendere pleas, findings of guilt, youthful offender determinations, first offender programs, pardons, commuted sentences, mistrials in which the defendant is discharged, executive clemencies, paroles, releases from correctional supervision, deaths, or a finding that the person must register as a sex offender;

(9)(A) "Dissemination" means disclosing criminal history information or disclosing the absence of criminal history information to any requestor that has applied and been approved by the Department of Arkansas State Police to receive the criminal history information.

(B) "Dissemination" does not mean:

(i) The furnishing of information by a department to personnel of a participating agency when criminal justice agencies jointly participate in the maintenance of a single recordkeeping system as an alternative to maintaining separate records; and

(ii) The furnishing of information by any criminal justice agency to another for the purpose of the administration of criminal justice;

(10)(A) "Employer" means a person or an entity that employs the services of another person or for whom an employee works and receives payment of wages or salary.

(B) "Employer" includes a person acting on an employer's behalf;

(11) "Pending information" means felony criminal history information in some stage of active prosecution or processing;

(12) "Requestor" means the employer, professional licensing board, institution of higher education, Arkansas Public Defender Commission, or any entity mandated by Arkansas law to perform criminal background checks through the department or any person who has obtained the written authorization of the subject of the record that has submitted an inquiry into an individual's criminal history information under this subchapter; and

(13) "Seal" or "expunge" means that the record or records in question shall be sealed, sequestered, and treated as confidential as provided by law, including pardons issued by the Governor.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 3; 2005, No. 1573, § 3; 2005, No. 2213, §§ 3, 4; 2007, No. 59, § 2; 2007, No. 571, § 2; 2007, No. 1586, § 2.

A.C.R.C. Notes. Acts 2007, No. 571, § 1, provided: "Legislative intent. It is the intent of this act to allow the Department of Arkansas State Police to release certain criminal history information to persons performing background checks on behalf of an employer and persons who have the written consent of the subject."

Amendments. The 2005 amendment by No. 1573 substituted "requestor" for "agency, professional licensing board, business designated by state or federal

law, or any other employer legally doing business in and paying taxes to the State of Arkansas" in (9)(A); substituted "employer, professional licensing board" for "employer, or professional licensing board" in (11); and made minor punctuation changes.

The 2005 amendment by No. 2213 substituted "requestor" for "agency, professional licensing board, business designated by state or federal law, or any other employer legally doing business in and paying taxes to the State of Arkansas" in (9)(A).

The 2007 amendment by No. 59 added (2)(B)(iii); inserted the designations of (i)

and (ii) in former (2)(B), and made related changes.

The 2007 amendment by No. 571 inserted present (10) and redesignated the remaining subsections accordingly; and inserted “or any person who has obtained the written authorization of the subject of the record” in (12).

The 2007 amendment by No. 1586 inserted “Arkansas Public Defender Commission” in present (12), and made a related change.

Cross References. Registration, certification, and licensing for criminal offenders, § 17-1-103.

12-12-1504. Information required — Exceptions.

(a) The Department of Arkansas State Police and the Arkansas Crime Information Center shall disseminate criminal history information pertaining to any felony arrest, detention, indictment, information, or other formal felony criminal charge to the extent entries have been made at the time of the request for the information.

(b) Any event, activity, or any portion of the criminal history information which has not been processed by the department or the center shall not be required to be included in the dissemination.

(c) Requests for information, supporting documents, and any responses under this subchapter are not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(d) This subchapter shall not affect any record or information that may be accessed by the public under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 4.

Cross References. Arkansas Crime Information Center Supervisory Board, duties and responsibilities, § 12-12-203.

Department of Arkansas State Police, duties, powers, restrictions, municipal police barred from certain highways, § 12-8-106.

12-12-1505. Disposition of data to the central repository.

(a) Criminal history information shall be submitted to the Arkansas Crime Information Center as required under § 12-12-1007.

(b) The central repository shall enter these disposition records in an expeditious manner.

(c) Criminal history information provided to the central repository or the Department of Arkansas State Police shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 5.

12-12-1506. Unrestricted information — Records — Immunity from civil liability.

(a)(1) All conviction information and felony arrest records may be disseminated as provided in this subchapter.

(2) Any criminal history information of felony arrest records and all conviction information that pertains to a person currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, may be disseminated without restriction.

(3)(A) The Identification Bureau of the Department of Arkansas State Police, the Arkansas Crime Information Center, or a third party shall be responsible for the maintenance of information pertaining to dissemination of criminal history information.

(B) The information pertaining to dissemination required to be maintained shall be retained for a period of not less than three (3) years for security purposes.

(4)(A)(i) Each requestor that is allowed access to criminal history information under this subchapter shall maintain in its files for at least three (3) years the written consent to obtain the criminal history information given by the applicant, employee, student, or prospective student.

(ii) Access to criminal history information and sealed or expunged records for the Arkansas Public Defender Commission is authorized without the consent of the subject of the request. However, the commission shall maintain records of the reason the dissemination was requested for a period of three (3) years.

(iii) Any requestor that is granted access to criminal history information under this subchapter shall not disseminate the criminal history information.

(B) These files and consent forms shall be subject to inspection by the Department of Arkansas State Police.

(b) This section allows the dissemination of information concerning persons who are required to register as sex offenders.

(c) A criminal justice agency and its employees and officials shall be immune from civil liability except in instances of gross negligence or intentional malice for dissemination of criminal history information under this subchapter.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 6; 2005, No. 1573, § 4; 2005, No. 2213, § 5; 2007, No. 1586, § 3.

Amendments. The 2005 amendment by No. 1573, in (a)(4)(A)(i), substituted “requestor” for “employer or professional licensing board,” inserted “for at least three (3) years”; and substituted “requestor” for “employer or professional licensing board” in (4)(A)(ii).

The 2005 amendment by No. 2213, in (a)(4)(A)(i), substituted “requestor” for “employer or professional licensing board” inserted “for at least three (3) years,” an added “student or prospective student”;

and substituted “requestor” for “employer or professional licensing board” in (4)(A)(ii).

The 2007 amendment inserted (a)(4)(A)(ii), and redesignated former (ii) as present (iii).

Cross References. Arkansas Crime Information Center Supervisory Board, duties and responsibilities, § 12-12-203.

Identification Bureau of the Department of Arkansas State Police, § 12-12-1005.

Registration, certification, and licensing for criminal offenders, § 17-1-103.

12-12-1507. Administration.

(a)(1) Release of criminal history information under this subchapter shall be made only by the Identification Bureau of the Department of Arkansas State Police and the Arkansas Crime Information Center as authorized by law.

(2) The Department of Arkansas State Police and the center may adopt rules and regulations consistent with the provisions and intent of this subchapter.

(b) The department and the center may contract with the Information Network of Arkansas under the Information Network of Arkansas Act, § 25-27-101 et seq., or any other qualified third-party vendor in the establishment of the gateway or means of electronically processing transactions under this subchapter.

(c)(1) The department shall not process a request for a Federal Bureau of Investigation background check unless a corresponding state background check through the Identification Bureau of the Department of Arkansas State Police has also been properly requested pursuant to this subchapter.

(2) The requirements of subdivision (c)(1) of this section may be waived upon written authorization of the Director of the Department of Arkansas State Police.

(d) The Arkansas State Police Automated Fingerprint Identification System may access and use the National Fingerprint File and Interstate Identification Index as provided by the Federal Bureau of Investigation when the Arkansas Code authorizes a fingerprint-based Federal Bureau of Investigation check for a noncriminal justice purpose and a positive identification based on fingerprints is made.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 7; 2005, No. 1573, § 5; 2009, No. 168, § 2.

Amendments. The 2005 amendment added (c).

The 2009 amendment added (d).

Cross References. Arkansas Crime Information Center Supervisory Board, duties and responsibilities, § 12-12-203.

Identification Bureau of the Department of Arkansas State Police, § 12-12-1005.

12-12-1508. Access to information — Fee.

(a) Criminal history information or requestor information collected and maintained under this subchapter is not considered public record information for dissemination within the intent and meaning of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) A fee for providing criminal history information shall be charged for each criminal history information requested.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 8.

12-12-1509. Right of review and challenge.

(a)(1) A person may review and challenge his or her criminal history information under § 12-12-1013.

(2) No fee shall be charged for the review or challenge of criminal history information.

(b)(1) A person may go to any law enforcement agency, provide positive verification of his or her identity, be fingerprinted by the law enforcement agency, and supply written details of the errors in the criminal history information.

(2) The local law enforcement agency must send the fingerprint card and information directly to the Identification Bureau of the Department of Arkansas State Police.

(3) The law enforcement agency shall verify that the identification of the person and the fingerprint card information are correct.

(4) There shall be no charge from the Department of Arkansas State Police or the Arkansas Crime Information Center for this review process.

(c)(1) After positive identification verification, a person may review his or her requestor information maintained through the department or its designee.

(2) No fee shall be charged for this review.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 9.

12-12-1510. Fees.

(a)(1) A fee may be charged for providing criminal history information under this subchapter.

(2) The amount of the fee shall be determined jointly by the Department of Arkansas State Police and the Arkansas Crime Information Center and shall not exceed twenty dollars (\$20.00), exclusive of any third-party electronic processing fee charges.

(3)(A) The fees shall be credited fifty percent (50%) to the Crime Information System Fund and fifty percent (50%) to the State Police Equipment Fund.

(B) The center may utilize these funds for the operation or expansion of the automated criminal justice information system, subject to legislative appropriations.

(C) The department may utilize these funds for the operation, expansion, and integration of the automated fingerprint identification system, which includes components and software to support a total integrated solution associated with the system.

(b) Special revenues deposited into the Crime Information System Fund and the State Police Equipment Fund may be used for personal services and operating expenses as provided by law, and any special revenues unused at the end of any fiscal year shall be carried forward.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 10.

12-12-1511. Penalty.

Any person who shall knowingly release or disclose to any unauthorized person any information collected and maintained under this subchapter and any person who knowingly obtains the information for purposes not authorized by this subchapter shall be deemed guilty of a Class A misdemeanor.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 11.

12-12-1512. Rules and regulations.

The Department of Arkansas State Police and the Arkansas Crime Information Center may promulgate rules and regulations as are necessary to implement, enforce, and administer this subchapter.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 11.

Cross References. Arkansas Crime Information Center Supervisory Board, duties and responsibilities, § 12-12-203.

Department of Arkansas State Police, duties, powers, restrictions, municipal police barred from certain highways, § 12-8-106.

12-12-1513. Status as a registered sex offender.

(a) The General Assembly finds that:

(1) The fact that a person is a registered sex offender or is required to register as a sex offender is releasable to employers and licensing boards;

(2) Certain agencies are mandated to perform background checks on persons who work with children, elderly persons, and developmentally disabled persons;

(3) The offenses for which an agency may exclude a person from employment are outlined in Arkansas law, but being a registered sex offender or being required to register as a sex offender is not listed as a disqualification;

(4) It is a primary government interest to protect the public against sex offenders. A registered sex offender poses a higher risk of reoffending; therefore, release of certain information will assist in protecting the safety of the public;

(5) Protection of the safety of the public will be increased by allowing agencies to immediately take the actions or precautions they deem necessary before employing or licensing the registrant or after employment or licensing of the registrant including, but not limited to, termination of employment or revocation of license;

(6) The provisions of this section are civil in nature and for the protection of the public; and

(7) It is the intent of this section that being a registered sex offender as a result of a court order or that being required to register as a sex

offender as a result of a court order may exclude a person from employment or licensure with agencies and boards that are mandated by Arkansas law to perform criminal history background checks.

(b) Whenever a noncriminal justice criminal history background check is performed on a person under the provisions of any criminal background check requirement contained in the Arkansas Code for employment, licensure, or any other purpose, the person may be disqualified for employment, licensure, or any other purpose for which the background check was conducted if it is determined that a court has entered an order requiring the person to register as a sex offender.

History. Acts 2005, No. 1941, § 1.

SUBCHAPTER 16 — CRIMINAL HISTORY FOR VOLUNTEERS ACT

SECTION.	SECTION.
12-12-1601. Title.	12-12-1606. Request for criminal back-ground check.
12-12-1602. Purpose.	12-12-1607. Background checks.
12-12-1603. Definitions.	12-12-1608. Penalty.
12-12-1604. Authority.	12-12-1609. Fees.
12-12-1605. Registration by volunteer or-ganization.	12-12-1610. Extent of disclosure.

Effective Dates. Acts 2005, No. 1778, § 2: Apr. 6, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the dissemination of complete, accurate, and timely criminal background check information for volunteers is necessary for the protection of children, the elderly, and developmentally disabled persons in the State of Arkansas. Therefore, an emergency is declared to exist and this

act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

12-12-1601. Title.

This subchapter shall be known and may be cited as the “Criminal History for Volunteers Act”.

History. Acts 2005, No. 1778, § 1.

12-12-1602. Purpose.

The purpose of this subchapter is to allow volunteer organizations to request and receive information regarding the qualifications of an individual who volunteers his or her time or services to work with children, the elderly, victims of domestic abuse, or individuals with

disabilities based upon the individual's state and federal criminal history.

History. Acts 2005, No. 1778, § 1.

12-12-1603. Definitions.

As used in this subchapter:

- (1) "Children" means individuals under sixteen (16) years of age;
- (2) "Conviction" means that an individual has been found guilty of or has pleaded guilty or nolo contendere to any offense by any court in the State of Arkansas or of any similar offense by a court in another state or a federal court regardless of whether the conviction has been sealed or expunged;
- (3) "Criminal history information" means a record compiled by the Arkansas Crime Information Center or the Identification Bureau of the Department of Arkansas State Police on an individual;
- (4) "Domestic abuse" means the same as defined in § 9-4-102;
- (5) "Elderly" means individuals sixty-five (65) years of age or older;
- (6) "Employee" means an individual currently in the service of an employer for full-time or part-time compensation and employed by contract or at will, in which the employer has the authority to control the individual in the material details of how work shall be performed and when compensation shall be provided;
- (7) "Individuals with disabilities" means mentally ill or developmentally disabled individuals with physical or mental impairments that substantially limit one (1) or more of the major life activities of the individual;
- (8) "Volunteer" means an individual who provides services involving contact with children, the elderly, or individuals with disabilities without an express or implied promise of compensation; and
- (9) "Volunteer organization" means an individual, group of individuals, association, partnership, corporation, limited liability company or partnership, business, or other entity that has volunteers who provide services to children, the elderly, victims of domestic abuse, or individuals with disabilities.

History. Acts 2005, No. 1778, § 1.

12-12-1604. Authority.

(a) The Department of Arkansas State Police and the Arkansas Crime Information Center may provide background check services to a volunteer organization pursuant to the provisions of this subchapter.

(b) The department and the center may promulgate rules to administer the provisions of this subchapter.

History. Acts 2005, No. 1778, § 1.

12-12-1605. Registration by volunteer organization.

(a) A volunteer organization desiring to obtain criminal background check information on volunteers shall register with the Department of Arkansas State Police.

(b) The department may promulgate rules regarding registration with the department to obtain criminal background check information.

(c) If the volunteer organization desires to receive criminal background check information from the Federal Bureau of Investigation, the volunteer organization shall include a copy of the minutes from its most recent board meeting that lists offenses that the volunteer organization considers to disqualify an applicant to volunteer from serving as a volunteer with the volunteer organization.

History. Acts 2005, No. 1778, § 1.

12-12-1606. Request for criminal background check.

(a)(1) Any volunteer organization registered to obtain criminal background check information from the Arkansas Crime Information Center or the Federal Bureau of Investigation concerning volunteers may apply to the Identification Bureau of the Department of Arkansas State Police for the purpose of obtaining criminal history information regarding any individual currently acting as a volunteer with the volunteer organization or desiring to act as a volunteer with the volunteer organization.

(2) The request form submitted by the volunteer organization shall include:

(A) The name of the volunteer organization;

(B) The identifying information of the individual for whom the background check is sought; and

(C) A signed authorization form executed by the volunteer authorizing the Identification Bureau of the Department of Arkansas State Police to release criminal history information.

(b) The request form shall be subject to inspection by the Department of Arkansas State Police.

(c) The volunteer organization shall retain a copy of the criminal background check request for a period of at least three (3) years from the date of the request.

History. Acts 2005, No. 1778, § 1.

12-12-1607. Background checks.

(a)(1) Upon receipt of a proper request from a volunteer organization, the Identification Bureau of the Department of Arkansas State Police shall conduct a background check through the Arkansas Crime Information Center.

(2)(A) The Identification Bureau of the Department of Arkansas State Police shall provide the information obtained from the Arkansas background check to the volunteer organization.

(B) The information shall include:

- (i) All pending Arkansas felony arrests;
- (ii) All Arkansas criminal convictions; and
- (iii) Whether the individual is a registered sex offender or required to register as a sex offender.

(b)(1) Upon the completion of the Arkansas background check, the volunteer organization may request through the Identification Bureau of the Department of Arkansas State Police a national criminal background check through the Federal Bureau of Investigation.

(2) The volunteer organization shall not be required to submit an additional application for the state and national criminal background check through the Federal Bureau of Investigation.

(3) The national background check shall comply with federal standards in effect as of January 1, 2005, including, but not limited to, standards concerning the requirement of the submission of the fingerprints of the volunteer.

(4) The Identification Bureau of the Department of Arkansas State Police shall not release the Federal Bureau of Investigation criminal history report to the volunteer organization but shall review the report and the criteria provided by the volunteer organization in its registration to obtain criminal background check information on volunteers and notify the volunteer organization whether the volunteer meets the qualifications for serving as a volunteer with the organization.

(c) A volunteer organization shall consider all information received in response to a request for criminal background information confidential.

History. Acts 2005, No. 1778, § 1.

12-12-1608. Penalty.

The following acts shall constitute a Class A misdemeanor:

- (1) Knowingly releasing or disclosing criminal background information to any unauthorized volunteer organization or person; or
- (2) Obtaining information for a purpose not authorized by this subchapter.

History. Acts 2005, No. 1778, § 1.

12-12-1609. Fees.

(a)(1) The Department of Arkansas State Police may charge a fee for providing criminal history background checks under this subchapter.

(2) The amount of the fee for a criminal history background check conducted through the Arkansas Crime Information Center shall be determined jointly by the department and the center and shall not

exceed twenty dollars (\$20.00), exclusive of any third party electronic processing fee charges.

(3) The amount of the fee for a criminal history background check performed by the Federal Bureau of Investigation shall not exceed the amount determined by the Federal Bureau of Investigation.

(b) Fees collected pursuant to this subchapter shall be credited as follows:

- (1) Fifty percent (50%) to the Crime Information System Fund; and
- (2) Fifty percent (50%) to the State Police Equipment Fund, to be used for the continued operation and expansion of the automated criminal history system and the automated fingerprint identification system.

History. Acts 2005, No. 1778, § 1.

12-12-1610. Extent of disclosure.

(a) The Department of Arkansas State Police and the Arkansas Crime Information Center shall disseminate criminal history information to the extent entries have been made at the time of the request for the information.

(b) Any event, activity, or any portion of the criminal history information that has not been processed by the department or the center shall not be required to be included in the dissemination.

(c) A request for information, supporting documents, and any response to a request for criminal background check information under this subchapter shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2005, No. 1778, § 1.

**SUBCHAPTER 17 — ADULT AND LONG-TERM CARE FACILITY RESIDENT
MALTREATMENT ACT**

SECTION.	SECTION.
12-12-1701. Title.	12-12-1710. Investigation by Department of Human Services.
12-12-1702. Purpose.	12-12-1711. Procedures for investigation by the Department of Human Services.
12-12-1703. Definitions.	12-12-1712. Photographs and x-rays.
12-12-1704. Spiritual treatment alone not abusive.	12-12-1713. Immunity for investigation participants.
12-12-1705. Privilege not grounds for exclusion of evidence.	12-12-1714. Investigative powers of the Department of Human Services.
12-12-1706. Civil penalties.	12-12-1715. Rights of subject of report — Investigative determination of the Department of Human Services — Notice of finding — Appeal.
12-12-1707. Adult and long-term care facility resident maltreatment hotline.	12-12-1716. Adult and Long-term Care Facility Resident Mal-
12-12-1708. Persons required to report adult or long-term care facility resident maltreatment.	
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SECTION.		SECTION.
	treatment Central Registry.	12-12-1718. Availability of screened out, pending, and unfounded reports.
12-12-1717.	Availability of founded reports of adult or long-term care facility resident maltreatment.	12-12-1719. Delegation of authority.
		12-12-1720. Penalties.
		12-12-1721. Reports as evidence.

12-12-1701. Title.

This subchapter shall be known and may be cited as the “Adult and Long-Term Care Facility Resident Maltreatment Act”.

History. Acts 2005, No. 1812, § 1.

12-12-1702. Purpose.

The purpose of this subchapter is to:

- (1) Provide a system for the reporting of known or suspected adult and long-term care facility resident maltreatment;
- (2) Ensure the screening, safety assessment, and prompt investigation of reports of known or suspected adult and long-term care facility resident maltreatment;
- (3) Provide for a civil action, if appropriate, to protect maltreated adults and long-term care facility residents; and
- (4) Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation and assessment of maltreated adults and long-term care facility residents, and prosecution of offenders.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 6.

Amendments. The 2007 amendment substituted “investigation, and assessment of maltreated adults and long-term care facility residents and prosecution of offenders” for “investigation, assessment, and prosecution of maltreated adults and long-term care facility residents” in (4).

12-12-1703. Definitions.

As used in this subchapter:

- (1)(A) “Abuse” means with regard to any long-term care facility resident or any patient at the Arkansas State Hospital by a caregiver:
 - (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person, excluding court-ordered medical care or medical care requested by the patient or long-term care facility resident or a person legally authorized to make medical decisions on behalf of the patient or long-term care facility resident;
 - (ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding

necessary care and treatment provided in accordance with generally recognized professional standards of care;

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

(iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(B) "Abuse" means with regard to any person who is not a long-term care facility resident or a patient at the Arkansas State Hospital:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;

(ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause;

(2) "Adult maltreatment" means abuse, exploitation, neglect, or sexual abuse of an adult;

(3) "Caregiver" means any of the following that has the responsibility for the protection, care, or custody of an endangered person or an impaired person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of a court:

(A) A related person or an unrelated person;

(B) An owner, an agent, or a high managerial agent of a public or private organization; or

(C) A public or private organization;

(4) "Department" means the Department of Human Services;

(5) "Endangered person" means:

(A) A person eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) A long-term care facility resident who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to the long-term care facility resident; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(6) "Exploitation" means the:

(A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

(B) Use of an adult endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another;

(C) The fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses the resources of an endangered person, impaired person, or long-term care facility resident for monetary or personal benefit, profit, or gain, or that results in depriving the endangered person, impaired person, or long-term care facility resident of rightful access to or use of benefits, resources, belongings, or assets; or

(D) Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

(7)(A) "Fiduciary" means a person or entity with the legal responsibility to:

(i) Make decisions on behalf of and for the benefit of another person; and

(ii) Act in good faith and with fairness.

(B) "Fiduciary" includes without limitation:

(i) A trustee;

(ii) A guardian;

(iii) A conservator;

(iv) An executor;

(v) An agent under financial power of attorney or health care power of attorney; or

(vi) A representative payee;

(8) "Imminent danger to health or safety" means a situation in which death or serious bodily harm could reasonably be expected to occur without intervention;

(9)(A) "Impaired person" means a person eighteen (18) years of age or older who as a result of mental or physical impairment is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(B) For purposes of this subchapter, a long-term care facility resident is presumed to be an impaired person;

(10) "Long-term care facility" means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for individuals with mental retardation; or

(F) Any facility that provides long-term medical or personal care;

(11) "Long-term care facility resident" means a person, regardless of age, living in a long-term care facility;

(12) “Long-term care facility resident maltreatment” means abuse, exploitation, neglect, or sexual abuse of a long-term care facility resident;

(13) “Maltreated adult” means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(14) “Maltreated person” means a person, regardless of age, who has been abused, exploited, neglected, physically abused, or sexually abused;

(15) “Neglect” means:

(A) An act or omission by an endangered person or an impaired person, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

(i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

(ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel;

(iii) Negligently failing to carry out a prescribed treatment plan; or

(iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in rules promulgated by the Office of Long-Term Care;

(16)(A) “Physical injury” means the impairment of a physical condition or the infliction of substantial pain on a person.

(B) If the person is an endangered person or an impaired person, there is a presumption that any physical injury resulted in the infliction of substantial pain;

(17) “Serious bodily harm” means sexual abuse, physical injury, or serious physical injury;

(18) “Serious physical injury” means physical injury to an endangered person or an impaired person that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(19) “Sexual abuse” means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor’s spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless; and

(20) “Subject of the report” means:

(A) The endangered person or impaired person;

(B) The adult’s legal guardian;

(C) The natural or legal guardian of a long-term care facility resident under eighteen (18) years of age; and

(D) The offender.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 7; 2007, No. 497, § 4; 2009, No. 165, §§ 9, 10; 2009, No. 525, § 1.

Amendments. The 2007 amendment by No. 283 rewrote (1); substituted “serious bodily harm” for “severe bodily injury” in (7); inserted “physically abused” in (13); deleted “as those terms are defined in § 5-14-101” at the end of (18); and made related and stylistic changes.

The 2007 amendment by No. 497 substituted “a danger to himself or herself”

for “an imminent risk of death or serious bodily harm to that person” in (5)(A)(i).

The 2009 amendment by No. 165 redesignated (3) and made stylistic changes; and substituted “rules” for “regulations” in present (15)(B)(iv).

The 2009 amendment by No. 525 inserted (6)(C) and (7), redesignated subdivisions accordingly, and made a related change.

12-12-1704. Spiritual treatment alone not abusive.

Nothing in this subchapter shall be construed to mean that an endangered person or an impaired person who is being furnished with treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or religious denomination is for that reason alone an endangered person or an impaired person.

History. Acts 2005, No. 1812, § 1.

12-12-1705. Privilege not grounds for exclusion of evidence.

Any privilege between husband and wife or between any professional person and his or her clients, except lawyer and client, including, but not limited to, physicians, members of the clergy, counselors, hospitals, clinics, rest homes, and nursing homes shall not constitute grounds for excluding evidence at any proceeding regarding an endangered person or an impaired person, or the cause of the proceeding.

History. Acts 2005, No. 1812, § 1.

12-12-1706. Civil penalties.

(a)(1) The State of Arkansas and the Attorney General may institute a civil action against any long-term care facility caregiver necessary to enforce any provision of this subchapter.

(2) Notwithstanding any criminal penalties assessed, any caregiver against whom any civil judgment is entered as the result of a civil action brought by the State of Arkansas through the Attorney General on a complaint alleging that caregiver to have abused, neglected, or exploited an endangered person or an impaired person in a long-term care facility certified under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2005, shall be subject to pay a civil penalty:

(A) Not to exceed ten thousand dollars (\$10,000) for each violation judicially found to have occurred; or

(B) Not to exceed fifty thousand dollars (\$50,000) for the death of a long-term care facility resident that results from a single violation.

(3)(A) The Attorney General shall not be precluded from recovering civil penalties under subdivision (a)(2)(A) of this section for the death of a person that results from multiple violations.

(B) However, the Attorney General may not recover civil penalties under both subdivisions (a)(2)(A) and (B) of this section.

(b) In any action brought under this section, the Attorney General shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(c) Any civil penalty under subdivision (a)(2) of this section shall be paid into the State Treasury and credited to the Arkansas Medicaid Program Trust Fund.

(d) Any caregiver against whom any civil judgment is entered as the result of a civil action under this section by the Attorney General shall be required to pay to the Attorney General all reasonable expenses that the court determines have been necessarily incurred in the enforcement of this subchapter.

(e) A civil action under this section may not be brought more than three (3) years after the date on which the violation of this subchapter is committed.

History. Acts 2005, No. 1812, § 1.

12-12-1707. Adult and long-term care facility resident maltreatment hotline.

(a) The Department of Human Services shall maintain a single statewide telephone number that all persons, whether mandated by law or not, may use to report a case of suspected adult maltreatment and long-term care facility resident maltreatment.

(b) When appropriate, a copy of the initial report shall immediately be made available to the appropriate law enforcement agency for its consideration.

(c)(1) The department shall not release information that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found that disclosure is necessary:

(A) To prevent execution of a crime; or

(B) For prosecution of a crime.

(2)(A) However, any person to whom the name of the reporter is disclosed is prohibited from redisclosing this information, except as provided in subdivision (c)(2)(B) of this section.

(B)(i) Upon request, the information shall be disclosed to:

(a) The Attorney General;

(b) The prosecuting attorney; or

(c) Law enforcement officers.

(ii) However, the information shall remain confidential until criminal charges are filed.

(d)(1) A report of an allegation of suspected adult maltreatment or long-term care facility resident maltreatment shall be accepted if the allegation, if true, would constitute adult maltreatment or long-term care facility resident maltreatment and so long as sufficient identifying information is provided to identify and locate the victim.

(2) A report to the hotline when the allegation, even if true, would not constitute adult maltreatment or long-term care facility resident maltreatment shall be screened out.

(e)(1) The hotline shall accept a report if the victim or offender is present in Arkansas or if the incident occurred in Arkansas.

(2) If the incident occurred in another state, the hotline shall screen out the report and transfer the report to the hotline of the state in which the incident occurred.

(3) Upon request from an adult maltreatment or long-term care facility resident maltreatment investigator in another state, the department shall complete courtesy interviews with the victim, offender, or any witness of adult maltreatment who resides in Arkansas.

(f) Upon registration of a hotline report of suspected adult maltreatment or long-term care facility resident maltreatment, the hotline shall refer the matter immediately to the appropriate investigating agency as outlined in this subchapter.

History. Acts 2005, No. 1812, § 1.

12-12-1708. Persons required to report adult or long-term care facility resident maltreatment.

(a)(1) Whenever any of the following persons has observed or has reasonable cause to suspect that an endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment, the person shall immediately report or cause a report to be made in accordance with the provisions of this section:

- (A) A physician;
- (B) A surgeon;
- (C) A coroner;
- (D) A dentist;
- (E) A dental hygienist;
- (F) An osteopath;
- (G) A resident intern;
- (H) A nurse;
- (I) A member of a hospital's personnel who is engaged in the administration, examination, care, or treatment of persons;
- (J) A social worker;
- (K) A case manager;
- (L) A home health worker;

- (M) A mental health professional;
 - (N) A peace officer;
 - (O) A law enforcement officer;
 - (P) A facility administrator or owner;
 - (Q) An employee in a facility;
 - (R) An employee of the Department of Human Services;
 - (S) A firefighter;
 - (T) An emergency medical technician;
 - (U) An employee of a bank or other financial institution;
 - (V) An employee of the United States Postal Service;
 - (W) An employee or a volunteer of a program or an organization funded partially or wholly by the department who enters the home of or has contact with an elderly person;
 - (X) A person associated with the care and treatment of animals, such as animal control officers and humane society officials;
 - (Y) An employee who enforces code requirements for a city, township, or municipality; or
 - (Z) Any clergy member, including without limitation, a minister, a priest, a rabbi, an accredited Christian Science practitioner, or any other similar functionary of a religious organization, or an individual reasonably believed to be a minister, a priest, a rabbi, an accredited Christian Science practitioner, or any other similar functionary of a religious organization by the person consulting him or her, except to the extent he or she:
 - (i) Has acquired knowledge of suspected maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or
 - (ii) Received the knowledge of the suspected maltreatment from the offender in the context of a statement of admission.
- (2) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff, an employee in or owner of a facility, or an employee of the department, he or she shall immediately notify the person in charge of the institution, facility, or agency, or that person's designated agent, who shall then become responsible for making a report or cause a report to be made within twenty-four (24) hours or on the next business day, whichever is earlier.
- (3) In addition to those persons and officials required to report suspected maltreatment, any other person may make a report if the person has observed an adult or long-term care facility resident being maltreated or has reasonable cause to suspect that an adult or long-term care facility resident has been maltreated.
- (b)(1) A report for a long-term care facility resident shall be made:
 - (A) Immediately to the local law enforcement agency for the jurisdiction in which the long-term care facility is located; and
 - (B) To the Office of Long-Term Care, under regulations of that office.
 - (2) A report of a maltreated adult who does not reside in a long-term

care facility shall be made to the adult and long-term care facility maltreatment hotline provided in § 12-12-1707.

(c) No privilege or contract shall relieve any person required by this subchapter to make a notification or report from the requirement of making the notification or report.

History. Acts 2005, No. 1812, § 1;
2007, No. 497, § 5.

Amendments. The 2007 amendment
added (a)(1)(V) through (a)(1)(Z).

12-12-1709. Report of death caused by maltreatment.

(a)(1) Any person or official who is required to report a case of suspected adult maltreatment or long-term care facility resident maltreatment under this subchapter and who has reasonable cause to suspect that an adult or long-term care facility resident has died as a result of maltreatment shall report the suspected death from maltreatment to the appropriate medical examiner or coroner.

(2)(A) In all cases of the death of a long-term care facility resident or a hospice facility resident, the long-term care facility or the hospice facility shall immediately report the death to the appropriate coroner.

(B) The report is required regardless of whether the long-term care facility or the hospice facility believes the death to be from natural causes or the result of maltreatment or any other cause.

(3)(A) In all cases of the death in a hospital of a person who was a long-term care facility resident within five (5) days before entering the hospital, the hospital shall immediately report the death to the appropriate coroner.

(B) The report is required regardless of whether the hospital believes the death to be from natural causes, the result of maltreatment, or any other cause.

(b)(1) The medical examiner or coroner shall accept the report for investigation and upon finding reasonable cause to suspect that a person has died as a result of maltreatment shall report the findings to a law enforcement agency and the appropriate prosecuting attorney.

(2) If the institution making the report is a hospital or long-term care facility, the medical examiner or coroner shall report the findings to the hospital or long-term care facility unless the findings are part of a pending or ongoing law enforcement investigation.

(c) If it receives findings under subdivision (b)(2) of this section, the medical examiner, coroner, or hospital shall also report findings under subsection (b) of this section to the Department of Human Services if:

(1) Reasonable cause exists to believe the death resulted from maltreatment; or

(2) Upon request of the department and there is a pending investigation concerning allegations of maltreatment occurring before death.

History. Acts 2005, No. 1812, § 1.

12-12-1710. Investigation by Department of Human Services.

(a) The Department of Human Services shall have jurisdiction to investigate all cases of suspected maltreatment of an endangered person or an impaired person.

(b)(1) The Adult Protective Services Unit of the Department of Human Services shall investigate:

(A) All cases of suspected adult maltreatment if the act or omission occurs in a place other than a long-term care facility; and

(B) All cases of suspected adult maltreatment of an adult endangered person or an adult impaired person if a family member of the adult endangered person or adult impaired person is named as the suspected offender, regardless of whether or not the adult endangered person or adult impaired person is a long-term care facility resident.

(2) The Office of Long-Term Care shall investigate all cases of suspected maltreatment of a long-term care facility resident.

(3) If requested by the department, a law enforcement agency shall assist in the investigation of any case of suspected adult maltreatment or long-term care facility resident maltreatment.

History. Acts 2005, No. 1812, § 1.

12-12-1711. Procedures for investigation by the Department of Human Services.

(a) The Department of Human Services shall conduct a thorough investigation of all suspected adult maltreatment or long-term care facility resident maltreatment in accordance with this subchapter.

(b)(1) The investigation shall be completed and an investigative determination entered within sixty (60) days.

(2) The investigation and written investigative report shall include:

(A) The nature, extent, and cause of the maltreatment;

(B) The identity of the person responsible;

(C) The names and conditions of other adults in the home, if the incident occurred in a home;

(D) An evaluation of the persons responsible for the care of the maltreated person, if any;

(E) The home environment, the relationship of the maltreated person to the next of kin or other person responsible for his or her care, and all other pertinent data; and

(F)(i) A visit to the maltreated adult's home, if the incident occurred in the home, and an interview with the maltreated adult.

(ii) An investigator shall interview the maltreated person alone and out of the hearing of any next of kin or other person responsible for the maltreated person's care.

(iii) If necessary, an interpreter may be present during the interview of the maltreated person.

History. Acts 2005, No. 1812, § 1.

12-12-1712. Photographs and x-rays.

(a) Any person who is required to report a case of adult maltreatment or long-term care facility resident maltreatment may take or cause to be taken, at public expense, color photographs of the area of trauma visible on the maltreated person and, if medically indicated, cause to be performed radiological examination of the maltreated person.

(b)(1) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff of any private or public institution or agency, he or she shall immediately notify the person in charge of the institution or agency or his or her designee.

(2) Upon notification under subdivision (b)(1) of this section, the person in charge of the institution or agency or his or her designee shall:

(A) Take or cause to be taken, at public expense, color photographs of physical trauma; and

(B) If medically indicated, cause to be performed a radiological examination of the maltreated person.

(c) Any photograph or x-ray taken shall be sent to the Department of Human Services as soon as possible.

History. Acts 2005, No. 1812, § 1.

12-12-1713. Immunity for investigation participants.

(a) Any person, official, or institution acting in good faith in the making of a report, the taking of a photograph, or the removal of a maltreated person under this subchapter shall have immunity from liability and suit for damages, civil or criminal, that otherwise might result by reason of those actions.

(b) The good faith of any person required to report a case of adult maltreatment or long-term care facility resident maltreatment shall be presumed.

History. Acts 2005, No. 1812, § 1.

12-12-1714. Investigative powers of the Department of Human Services.

(a) If admission cannot be obtained to a home, an institution, or other place in which an allegedly maltreated person may be present, a circuit court, upon good cause shown, shall order the person responsible for or in charge of the home, institution, or other place to allow entrance for an examination and investigation.

(b) If admission to a home cannot be obtained due to hospitalization or similar absence of the maltreated person and admission to the home is necessary to complete an investigation, a circuit court, upon good cause shown, shall order a law enforcement agency to assist the

Department of Human Services to obtain entrance to the home for the required investigation of the home environment.

(c)(1) Upon request, the medical, mental health, or other records regarding the maltreated person, including protected health information, maintained by any facility or maintained by any person required by this subchapter to report suspected adult maltreatment or long-term care facility resident maltreatment, shall be made available to the department for the purpose of conducting an investigation under this subchapter.

(2) Upon request, financial records maintained by a bank or similar institution regarding a maltreated person shall be made available to the department for the purpose of conducting an investigation under this subchapter.

(3) A circuit court, upon good cause shown, shall order any facility or person that maintains medical, mental health, or other records, including protected health information, regarding a maltreated person to tender the records to the department for the purpose of conducting an investigation under this subchapter.

(d)(1) An investigation under this subchapter may include a medical, psychological, social, vocational, financial, and educational evaluation and review, if necessary.

(2)(A)(i) The department may file an ex parte petition in circuit court requesting an order of investigation.

(ii) If the court issues an order of investigation, any subsequent petition for custody shall be filed in this same case.

(B) No fees may be charged or collected by the clerk, including without limitation, fees for filing, summons, or subpoenas.

(3)(A) The department may compel the allegedly maltreated person to be evaluated in the least restrictive environment and least intrusive manner necessary to obtain an assessment if:

(i) The department is unable to secure an order of investigation from the circuit court during regular business hours;

(ii) The department has reasonable cause to suspect a significant risk for serious harm to the health or safety of the adult; and

(iii) The department cannot adequately assess:

(a) The adult's capacity to comprehend the nature and consequences of remaining in the situation or condition; or

(b) The adult's mental or physical impairment and ability to protect himself or herself from maltreatment.

(B)(i) Upon request by the department and without a court order, law enforcement and medical personnel shall assist the department as needed in obtaining an assessment on an allegedly maltreated person.

(ii) The assessment may include emergency treatment.

(C) No later than the next business day after the assessment, the department shall petition the court for an order of investigation as outlined in this section.

(4)(A) Upon a showing of reasonable cause to suspect an allegedly maltreated person is endangered or impaired, the circuit court shall issue an order of investigation.

(B) The order of investigation may include the power to compel the allegedly maltreated person to be assessed to determine whether the person:

(i) Lacks capacity to understand the nature and consequences of remaining in the situation or condition that poses a danger to the person; or

(ii) Has a mental or physical impairment such that the person is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(5) Upon good cause shown by the department, the circuit court may order emergency treatment of the allegedly maltreated adult.

(6)(A) The allegedly maltreated adult has a right to counsel, including appointed counsel if indigent, and a right to a hearing within five (5) business days after the allegedly maltreated adult is served with the ex parte order of investigation.

(B) If the allegedly maltreated adult is not indigent, the circuit court has the authority to appoint counsel to represent the allegedly maltreated adult and to direct payment from the assets of the adult for legal services received by the adult.

(C) If the department determines the allegedly maltreated adult is not endangered or impaired and releases the allegedly maltreated adult or ceases any assessment, a hearing under subdivision (b)(6)(A) of this section is not required.

(7)(A) At the five-day hearing the court shall determine whether the order of investigation shall continue for an additional period of time or be terminated.

(B) The burden shall be upon the department to show probable cause that the alleged maltreated person is an endangered or impaired person and that additional time is necessary to complete the investigation.

(8) The department and the court shall defer to any declaration executed in conformance with the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, § 20-17-201 et seq., and before any documented medical or judicial determination of lack of capacity.

(e) If before an investigation under this subchapter is completed, the Adult Protective Services Unit of the Department of Human Services determines that the immediate removal of a maltreated adult is necessary to protect the maltreated adult from imminent danger to his or her health or safety, the unit may:

(1) Petition a circuit court for an order of temporary custody; or

(2) Exercise a seventy-two-hour hold under the Adult Maltreatment Custody Act, § 9-20-101 et seq.

(f) Upon petition by the department, the court may direct payment from the assets of the allegedly maltreated adult for services rendered or goods purchased by or for the allegedly maltreated adult during the course of the investigation.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 8; 2007, No. 497, § 6; 2009, No. 525, § 2.

Amendments. The 2007 amendment by No. 283 inserted “including protected health information” in (c)(1) and (c)(3); added (f); and made related and stylistic changes.

The 2007 amendment by No. 497 added the (d)(1) designation and added (d)(2) through (d)(8).

The 2009 amendment, in (d)(6), substituted “the allegedly maltreated adult is served with the” for “issuance of an” in (d)(6)(A), and inserted (d)(6)(C).

12-12-1715. Rights of subject of report — Investigative determination of the Department of Human Services — Notice of finding — Appeal.

(a) Upon completion of an investigation, the Department of Human Services shall determine that an allegation of adult maltreatment or long-term care facility maltreatment is either:

(1)(A) Unfounded, a finding that shall be entered if the allegation is not supported by a preponderance of the evidence.

(B)(i) An unfounded report shall be expunged one (1) year after the completion of the investigation.

(ii) Demographic information may be retained for statistical purposes; or

(2)(A) Founded, a finding that shall be entered if the allegation is supported by a preponderance of the evidence.

(B) A determination of founded but exempt shall be entered on a report if an adult practicing his or her religious beliefs is receiving spiritual treatment under § 5-28-105 or § 12-12-1704.

(b)(1)(A) After making an investigative determination, the department shall notify in writing within ten (10) business days:

(i)(a) The person identified as the offender.

(b) However, in cases of unfounded self-neglect, no notice is required;

(ii) Either the:

(a) Person identified as the maltreated person;

(b) Legal guardian of the maltreated person; or

(c) Natural or legal guardian of a long-term care facility resident under eighteen (18) years of age;

(iii) The current administrator of the long-term care facility if the incident occurred in a long-term care facility; and

(iv) If known by the Office of Long-Term Care, the administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred.

(B) If the investigation determines that the report is founded, notification to the offender shall be by process server or by certified mail, restricted delivery.

(2) The notification under subdivision (b)(1) of this section shall include the following:

(A) The investigative determination, exclusive of the source of the notification, including the nature of the allegation and the date and time of occurrence;

(B) A statement that an offender of a founded report has the right to an administrative hearing upon a timely request;

(C) A statement that the request for an administrative hearing shall be made to the department within thirty (30) days of receipt of the notice of determination;

(D) A statement that the administrative hearing will be by telephone hearing unless the offender requests an in-person hearing within thirty (30) days after the date of receipt of notice of the determination;

(E) A statement of intent to report in writing after the offender has had an opportunity for an administrative hearing the founded investigative determination to:

(i) The Adult and Long-term Care Facility Resident Maltreatment Central Registry; and

(ii) Any applicable licensing authority;

(F) A statement that the offender's failure to request an administrative hearing in writing within thirty (30) days from the date of receipt of the notice will result in submission of the investigative report, including the investigative determination, to:

(i) The registry; and

(ii) Any applicable licensing authority;

(G) The consequences of waiving the right to an administrative hearing;

(H) The consequences of a finding by a preponderance of the evidence through the administrative hearing process that the maltreatment occurred;

(I) The fact that the offender has the right to be represented by an attorney at the offender's own expense; and

(J) The name of the person making the notification, his or her occupation, and the location at which he or she can be reached.

(c)(1) The administrative hearing process shall be completed within one hundred twenty (120) days from the date of the receipt of the request for a hearing unless waived by the offender.

(2) The department shall hold the administrative hearing at a reasonable place and time.

(3) For an incident occurring in a long-term care facility, the department may not make a finding that an offender has neglected a long-term care facility resident if the offender demonstrates that the neglect was caused by factors beyond the control of the offender.

(4) A delay in completing the administrative hearing process that is attributable to the offender shall not count against the time limit in subdivision (c)(1) of this section.

(5) Failure to complete the administrative hearing process in a timely fashion shall not prevent the department or a court from:

(A) Reviewing the investigative determination of jurisdiction;

(B) Making a final agency determination; or

(C) Reviewing a final agency determination under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(6) If any party timely requests an in-person administrative hearing, the hearing officer may notify the parties that the hearing will be conducted by video conference.

(d)(1) When the department conducts an administrative hearing, the chief counsel of the department may require the attendance of witnesses and the production of books, records, or other documents through the issuance of a subpoena if the testimony or information is necessary to adequately present the position of the department or the alleged offender in a report.

(2) Failure to obey the subpoena may be deemed a contempt and is punishable accordingly.

(e) If the department's investigative determination of founded is upheld during the administrative hearing process or if the offender does not timely appeal for or waives the right to an administrative hearing, the department shall report the investigative determination in writing within ten (10) business days to:

(1) The offender;

(2) The current administrator of the long-term care facility if the incident occurred in a long-term care facility;

(3) The administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred;

(4) The appropriate licensing authority;

(5) The registry;

(6) The maltreated person or the legal guardian of the maltreated person; and

(7) If required under § 21-15-110, the employer of any offender if the offender is in a designated position with a state agency.

History. Acts 2005, No. 1812, § 1; 2009, No. 525, § 3.

Amendments. The 2009 amendment substituted "founded but exempt shall be entered on a report if" for "founded shall

not be entered solely because" in (a)(2)(B); inserted (b)(2)(D) and redesignated the subsequent subdivisions accordingly; inserted (c)(6); added (e)(7); and made related changes.

12-12-1716. Adult and Long-term Care Facility Resident Maltreatment Central Registry.

(a)(1) There is established within the Department of Human Services a statewide Adult and Long-term Care Facility Resident Maltreatment Central Registry.

(2) The registry shall contain investigative determinations made by the department on all founded reports of adult maltreatment and long-term care facility resident maltreatment.

(3) An offender's name shall be placed in the registry if:

(A) After notice, the offender does not timely request an administrative hearing; or

(B) Upon completion of the administrative hearing process, the department's investigative determination of founded is upheld.

(4) An offender's name shall remain in the registry unless:

- (A) The name is removed under a statute;
- (B) The name is removed under a rule; or
- (C) The offender prevails upon appeal.

(b) The department may adopt rules necessary to encourage cooperation with other states in exchanging reports to effect a national registry system of adult maltreatment.

(c)(1) The department may charge a reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, and mailing records of the investigative files maintained under this subchapter.

(2) The department may also charge a reasonable fee for reproducing copies of tapes and photographs maintained under this subchapter.

(3) No fee may be charged to a nonprofit or volunteer agency that requests a search of the investigative files maintained under this subchapter.

(4) No fee may be charged under this subchapter to a person who is indigent.

History. Acts 2005, No. 1812, § 1; substituted “reports” for “allegations” in 2009, No. 525, § 4. (a)(2).

Amendments. The 2009 amendment

12-12-1717. Availability of founded reports of adult or long-term care facility resident maltreatment.

(a) A report made under this subchapter that is determined to be founded, as well as any other information obtained, including protected health information, and a report written or photograph taken concerning a founded report in the possession of the Department of Human Services shall be confidential and shall be made available only to:

(1) A physician who has before him or her an endangered person or an impaired person the physician reasonably believes may have been maltreated;

(2) A person authorized to place the adult in protective custody if the person:

(A) Has before him or her an adult the person reasonably believes may have been maltreated; and

(B) Requires the information to determine whether to place the adult in protective custody;

(3) An authorized agency having responsibility for the care or supervision of an endangered person or an impaired person;

(4) Any person who is the subject of a report or that person’s legal guardian;

(5) A grand jury or court, if the grand jury or court determines that the information is necessary for the determination of an issue before the grand jury or court;

(6) A prosecuting attorney, law enforcement official, coroner, or the Attorney General or his or her designated investigator;

(7)(A) A mandated reporter who has made a report of suspected maltreatment.

(B) However, a mandated reporter shall receive the information only to the extent that he or she may be informed after completion and closure of the investigation whether:

- (i) Legal action was taken;
- (ii) Services were provided; or
- (iii) No action was taken.

(C) No further information shall be released to a mandated reporter, and the mandated reporter shall be informed of the confidentiality of the information and the penalties for disclosure;

(8)(A) An employer or volunteer agency for the purpose of screening an employee, applicant, or volunteer upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(B) The only information released to the employer or volunteer agency shall be whether or not the Adult and Long-term Care Facility Resident Maltreatment Central Registry contains any founded reports naming the employee, applicant, or volunteer as an offender;

(9) The Death Review Committee of the Department of Human Services;

(10) The current administrator of the long-term care facility, if the incident occurred in a long-term care facility;

(11) The administrator of the long-term care facility that currently employs the offender, if different from the long-term care facility in which the incident occurred;

(12) A person or provider identified by the department as having services needed by the maltreated person;

(13) Any applicable licensing or registering authority;

(14) Any employer, legal entity, or board responsible for the person named as the offender;

(15) Any legal entity or board responsible for the maltreated person; and

(16) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program.

(b)(1) Under no circumstances may the information contained in the registry be released to a person unless the person's capacity is confirmed by the department.

(2) Except for the subject of the report, no person or agency to whom disclosure is made may disclose to any other person a report or other information obtained under this section.

(c)(1) The department may not release data that would identify the person who made a report except to law enforcement, a prosecuting attorney, or the office of the Attorney General.

(2) A court of competent jurisdiction may order release of data that would identify the person who made a report after the court has reviewed in camera the record related to the report and has found that disclosure is needed:

- (A) To prevent execution of a crime; or
- (B) For prosecution of a crime.

(d) However, information contained in the registry may be made available to bona fide and approved research groups solely for the purpose of scientific research, but in no event shall the name of a person be released, nor shall specific circumstances or facts related to a specific person be used in any research report that might be identifiable with the person.

(e) A person who knowingly permits or encourages the release of data or information contained in the registry to a person not permitted by this subchapter to receive the data or information upon conviction is guilty of a Class A misdemeanor.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 9; 2009, No. 165, § 11.

Amendments. The 2007 amendment, in (a), inserted “including protected health information” in the introductory paragraph, and added (a)(14) through (a)(16); and made related changes.

The 2009 amendment, in (e), substituted “knowingly” for “willfully,” inserted “adult and long-term care facility resident maltreatment central” and “upon conviction,” and made minor stylistic changes.

12-12-1718. Availability of screened out, pending, and unfounded reports.

(a) A record of a screened-out report of adult maltreatment or long-term care facility resident maltreatment shall not be disclosed except to the office of the Attorney General, the prosecuting attorney, and an appropriate law enforcement agency and may be used only within the Department of Human Services for purposes of administration of the program.

(b)(1) A pending report, including protected health information, is confidential and shall be made available only to:

(A) The department, including the Death Review Committee of the Department of Human Services;

(B) A law enforcement agency;

(C) A prosecuting attorney;

(D) The office of the Attorney General;

(E) A circuit court having jurisdiction pursuant to a petition for emergency, temporary, long-term protective custody, or protective services;

(F) A grand jury or court, upon a finding that the information in the report is necessary for the determination of an issue before the grand jury or court;

(G) A person or provider identified by the department as having services needed by the maltreated person;

(H) Any applicable licensing or registering authority;

(I) Any employer, legal entity, or board responsible for the person named as the offender;

(J) Any legal entity or board responsible for the maltreated person; and

(K) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program.

(2) The subject of the report may only be advised that a report is pending.

(c) Upon satisfaction of due process and if an allegation was determined to be unfounded, the investigative report, including protected health information, is confidential and shall be made available only to:

- (1) The department, including the committee;
- (2) A law enforcement agency;
- (3) A prosecuting attorney;
- (4) The office of the Attorney General;
- (5) Any applicable licensing or registering authority;
- (6) Any person named as a subject of the report or that person's legal guardian;

(7) A circuit court having jurisdiction pursuant to a petition for emergency, temporary, long-term protective custody, or protective services;

(8) A grand jury or court, upon a finding that the information in the record is necessary for the determination of an issue before the grand jury or court;

(9) A person or provider identified by the department as having services needed by the person;

(10) Any employer, legal entity, or board responsible for the person named as the offender;

(11) Any legal entity or board responsible for the maltreated person; and

(12) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program.

(d)(1) An unfounded report shall be expunged one (1) year after completion of the investigation.

(2) However, demographic information may be retained for statistical purposes.

(e)(1) Except for the subject of the report, no person or agency to which disclosure is made may disclose to any other person a report or other information obtained under this section.

(2) Upon conviction, any person disclosing information in violation of this subsection is guilty of a Class C misdemeanor.

(f)(1) The department may not release data that would identify the person who made a report except to law enforcement, a prosecuting attorney, or the office of the Attorney General.

(2) A court of competent jurisdiction may order release of data that would identify the person who made a report after the court has reviewed in camera the record related to the report and has found that disclosure is needed:

- (A) To prevent commission of a crime; or
- (B) For prosecution of a crime.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 10; 2009, No. 525, § 5.

Amendments. The 2007 amendment inserted “including protected health information” in (a)(1) and (b); added (a)(1)(I) through (a)(1)(K), (b)(10) through (b)(12), and (d); and made related changes.

The 2009 amendment inserted (a) and redesignated the subsequent subsections

accordingly; deleted “screened out report or a” preceding “pending report” in (b)(1); substituted “satisfaction of due process” for “completion of the administrative hearing process” in (c); added (f); and made minor stylistic changes.

12-12-1719. Delegation of authority.

The Director of the Department of Human Services may assign responsibilities for administering the various duties imposed upon the Department of Human Services under this subchapter to respective divisions of the department that in the director’s opinion are best able to render service or administer the provisions of this subchapter.

History. Acts 2005, No. 1812, § 1.

12-12-1720. Penalties.

(a)(1) A person commits the offense of failure to report under this subchapter in the first degree if he or she:

(A) Is a mandated reporter under § 12-12-1708;

(B) Has observed or has reasonable cause to suspect that an endangered person or impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment; and

(C) Knowingly fails to report or cause a report to be made to the adult and long-term care facility resident maltreatment hotline.

(2) Failure to report under this subchapter in the first degree is a Class B misdemeanor.

(b)(1) A person commits the offense of failure to report in the second degree if he or she:

(A) Is a mandated reporter under § 12-12-1708;

(B) Has observed or has reasonable cause to suspect that an endangered person or impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment; and

(C)(i) Knowingly fails to make a report in the manner and time provided in this subchapter to the adult and long-term care facility resident maltreatment hotline.

(ii) Knowingly fails to cause a report to be made in the manner and time provided in this subchapter to the adult and long-term care facility resident maltreatment hotline.

(2) Failure to report in the second degree is a Class C misdemeanor.

(c) A person or caregiver required by this subchapter to report a case of suspected adult maltreatment or long-term care facility resident maltreatment who purposely fails to do so is civilly liable for damages proximately caused by the failure.

(d)(1) A person commits the offense of false reporting of adult abuse if he or she purposely makes a false report to the adult and long-term care facility resident maltreatment hotline knowing the allegation in the false report to be false.

(2) For a first offense, false reporting of adult abuse is a Class A misdemeanor.

(3) For a subsequent offense, false reporting of adult abuse is a Class D felony.

(e)(1) A person commits the offense of unlawful disclosure of data or information under this subchapter if:

(A) He or she purposely discloses data or information to a person to whom disclosure is not permitted under § 12-12-1717 or § 12-12-1718; or

(B) He or she purposely encourages or permits the release of data or information to a person to whom disclosure is not permitted under § 12-12-1717 or § 12-12-1718.

(2) Unlawful disclosure of data or information under this subchapter is a Class A misdemeanor.

(f)(1) A person commits the offense of failure to report a death under this subchapter if he or she:

(A) Is required to report a death under § 12-12-1709;

(B) Has reasonable cause to suspect that an adult or long-term care facility resident has died as a result of maltreatment; and

(C) Knowingly fails to make the report in the time and manner required under this subchapter.

(2) Failure to report a death under this subchapter is a Class C misdemeanor.

History. Acts 2005, No. 1812, § 1; 2009, No. 165, § 12; 2009, No. 525, § 6.

A.C.R.C. Notes. This section was amended by both Acts 2009, No. 165, § 12, and Acts 2009, No. 525, § 6. Except for present subsection (c) of this section, this section is codified as amended by Acts 2009, No. 525, § 6, pursuant to § 1-2-207(b) and Acts 2009, No. 165, § 62. The amendments by Acts 2009, No. 165, § 12, and Acts No. 525, § 6, to present subsection (c) of this section were not in conflict.

Amendments. The 2009 amendment by No. 165, throughout the section, substituted “knowingly” for “willfully” and “upon conviction is” for “shall be”; substituted “violating subsection (c) of this section” for “making false allegations” in (d); and made minor stylistic changes.

The 2009 amendment by No. 525 rewrote the section.

12-12-1721. Reports as evidence.

(a) A written report from a person or official required by this subchapter to report shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

(b) The affidavit of a physician, psychiatrist, psychologist, or licensed certified social worker shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

History. Acts 2005, No. 1812, § 1.

CHAPTER 13

FIRE PREVENTION

SUBCHAPTER

1. FIRE PREVENTION ACT.
2. ARKANSAS FIRE TRAINING ACADEMY.
3. ARSON REPORTING-IMMUNITY ACT.

SUBCHAPTER 1 — FIRE PREVENTION ACT

SECTION.

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and forfeitures.

Cross References. Antiarson infor-
mation from insurance applicants, § 23-
88-201 et seq.

State Fire Prevention Commission,
§ 20-22-201 et seq.

Effective Dates. Acts 1955, No. 254,
§ 21: July 1, 1955.

Acts 1981, No. 45, § 15: July 1, 1981.
Emergency clause provided: "It is hereby
found and determined by the General As-
sembly that the agencies, departments,
and programs now performed through the
Department of Public Safety could more
efficiently and economically perform their
respective duties and responsibilities
through reorganized agencies and depart-
ments operating as separate entities; that
substantial savings could be made by
eliminating the central services of the
Department of Public Safety; and that the
immediate passage of this act is necessary
to provide for advance planning for more
efficient administration after the close of
the current fiscal biennium of the various
public safety programs of this state.
Therefore, an emergency is hereby de-

clared to exist and this act, being neces-
sary for the immediate preservation of the
public peace, health, and safety, shall be
in full force and effect from and after July
1, 1981."

Acts 1981, No. 540, § 18: July 1, 1981.
Emergency clause provided: "It is hereby
found and determined by the Seventy-
Third General Assembly, that the Consti-
tution of the State of Arkansas prohibits
the appropriation of funds for more than a
two-year period; that the effectiveness of
this act on July 1, 1981 is essential to the
operation of the agency for which the
appropriations in this act are provided,
and that in the event of an extension of
the Regular Session, the delay in the
effective date of this act beyond July 1,
1981 could work irreparable harm upon
the proper administration and providing
of essential governmental programs.
Therefore, an emergency is hereby de-
clared to exist and this act being neces-
sary for the immediate preservation of the
public peace, health, and safety shall be in
full force and effect from and after July 1,
1981."

12-13-101. Title.

This subchapter shall be known as the “Fire Prevention Act”.

History. Acts 1955, No. 254, § 1; A.S.A. 1947, § 82-806.

12-13-102. Definitions.

As used in this subchapter:

(1) “Building” means any structure, framework, or housing, public or private;

(2) “Director” means the Director of the Department of Arkansas State Police;

(3) “Fire hazard” means any building, premises, place, or thing which by reason of its nature, location, occupancy, condition, or use may cause loss, damage, or injury to persons or property by reason of fire, explosion, or action of the elements;

(4) “Members of fire departments” includes the personnel of all departments supported wholly or partially by public funds;

(5) “Officer” means an officer of the Department of Arkansas State Police whom the director may appoint or designate to execute the powers and perform the duties specified in this subchapter and also includes all peace officers as defined in subdivision (7) of this section;

(6)(A) “Owner” shall be given its ordinary meaning and includes any trustee or any person having a freehold interest in property.

(B) However, a lessee or mortgagee of property shall not be deemed the owner thereof;

(7) “Peace officer” includes every type of law enforcement officer commissioned and active within this state;

(8) “Person” means any individual, copartnership, corporation, or voluntary association; and

(9) “Premises” means any parcel of land, exclusive of buildings thereon, and includes parking lots, tourist camps, trailer camps, airports, stockyards, junkyards, and other places or enclosures, however owned, used, or occupied.

History. Acts 1955, No. 254, § 2; A.S.A. 1947, § 82-807.

12-13-103. Officer’s neglect of duty — Penalty.

(a) Any officer referred to in this subchapter who neglects to comply with any requirement of this subchapter shall be guilty of a violation.

(b) Upon conviction, the officer shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) for each neglect or violation.

History. Acts 1955, No. 254, § 9; A.S.A. 1947, § 82-814; Acts 2005, No. 1994, § 77.

Amendments. The 2005 amendment

substituted “violation” for “misdemeanor” in (a); and deleted “and in default of the payment thereof shall be imprisoned not

to exceed thirty (30) days" from the end of (b).

12-13-104. Administration and enforcement.

(a) The administration and enforcement of this subchapter are vested in the Department of Arkansas State Police.

(b) The Director of the Department of Arkansas State Police is empowered to create and maintain a State Fire Marshal Enforcement Section in the Department of Arkansas State Police and to appoint such personnel with such duties, powers, and titles as he or she may deem necessary for the proper administration and enforcement of this subchapter.

History. Acts 1955, No. 254, § 3; A.S.A. 1947, § 82-808.

Publisher's Notes. Acts 1955, No. 254, § 3, which is codified in this section, also empowered the Director of the Department of Arkansas State Police to create and maintain a Division of Fire Prevention within the department and to appoint personnel with duties, powers, and titles as he deemed necessary for the proper administration and enforcement of this subchapter.

Acts 1955, No. 254, § 18, abolished the office of State Fire Marshal as it then existed and transferred all its titles, functions, powers, duties, records, files, and other property to the Director of the Arkansas State Police.

Acts 1971, No. 38, § 14, as amended, transferred the Department of Arkansas State Police into the Department of Public Safety where it was located in the Police Division.

Acts 1975, No. 492, § 1, and a number of successor provisions contained in appropriations bills (Acts 1975 (Extended Sess., 1976), No. 1017, § 21; Acts 1979, No. 1062, § 18; and Acts 1981, No. 540,

§ 12), provided that a State Fire Marshal Enforcement Section be established within the Police Services Division of the Department of Public Safety and that such section should administer this subchapter.

Acts 1981, No. 45, § 3, provided, in part, that the State Fire Marshal Enforcement Section of the Police Services Division of the Department of Public Safety, and all of its powers, functions, duties, personnel, and funds would be detached from the Department of Public Safety (abolished by Acts 1981, No. 45, § 1) and transferred to the Department of Arkansas State Police. It further provided that nothing in the act would be construed so as to reduce any rights which an employee of the State Fire Marshal Enforcement Section of the Arkansas State Police would have under any civil service or merit system. The section further provided that all powers, functions, and duties added to the State Fire Marshal Enforcement Section subsequent to the enactment of Acts 1971, No. 38 would be vested in and thereafter performed by the State Fire Marshal Enforcement Section of the Arkansas State Police.

12-13-105. Duties of State Fire Marshal Enforcement Section.

The State Fire Marshal Enforcement Section shall have the responsibility to:

(1) Provide sufficient training to the several deputy fire marshals in the State of Arkansas to enable them to better understand their duties and their authority and to motivate them to perform their duties in an effective and efficient manner;

(2) Coordinate fire prevention efforts with other agencies and groups;

- (3) Develop and present public awareness programs in fire prevention and protection;
- (4) Develop and disseminate fire prevention information and material;
- (5) Enforce the fire prevention code and periodically revise and update such code;
- (6) Investigate fires of a suspicious nature in the state; and
- (7) Do and perform such other functions as will promote an efficient and effective fire prevention and control program in the state.

History. Acts 1981, No. 540, § 12; A.S.A. 1947, § 5-914.2.

Publisher's Notes. Acts 1983, No. 358, § 1, transferred the authority and responsibility of the State Fire Marshal Enforcement Section of the Arkansas State Police to establish an information retrieval system on fires, fire deaths, and fire injuries;

to provide statistical data for evaluating current fire protection efforts; and to enable the correction of current deficiencies and the development of new methods to the Southern Arkansas University Technical Branch Fire Training Academy.

Cross References. Criminal acts involving explosives, § 5-73-108.

12-13-106. Section personnel.

The members or heads of the State Fire Marshal Enforcement Section shall be appointed and serve in the same manner as provided by law for the operation of other divisions of the Department of Arkansas State Police.

History. Acts 1981, No. 45, § 3; A.S.A. 1947, § 5-914.2a.

12-13-107. Director of the Department of Arkansas State Police — Duties generally.

(a) It shall be the duty of the Director of the Department of Arkansas State Police and his or her officers and deputies to enforce all laws and ordinances with regard to the following:

- (1) The prevention of fires;
- (2) The storage, sale, and use of combustibles and explosives;
- (3) The installation and maintenance of automatic or other fire alarm systems and fire extinguishing equipment;
- (4) The construction, maintenance, and regulation of fire escapes;
- (5) The means and adequacy of exits in case of fire from factories, asylums, hospitals, churches, schools, halls, theaters, and all other places in which numbers of people work, live, or congregate from time to time, for any purpose; and
- (6) The suppression of arson and the investigation of the cause, origin, and circumstances of fires.

(b) The director is empowered to adopt reasonable rules and regulations for the effective administration of this subchapter to accomplish its intent and purposes, and to safeguard the public from fire hazards.

(c) The director shall make reasonable regulations for the keeping, storing, using, manufacture, selling, handling, transportation, or other

disposition of highly inflammable materials and rubbish, gunpowder, dynamite, crude petroleum or any of its products, explosives or compounds or any other explosive, including fireworks, and firecrackers, and he or she may prescribe the materials and construction of receptacles and buildings to be used for any of those purposes.

(d) Nothing in this subchapter shall apply to the inspection of boilers, § 20-23-101 et seq., the administration and enforcement of which is now vested in the Department of Labor.

History. Acts 1955, No. 254, §§ 5, 6; A.S.A. 1947, §§ 82-810, 82-811.

12-13-108. Ex officio deputies.

All mayors, members of fire departments, and peace officers shall be ex officio deputies to the Director of the Department of Arkansas State Police. They shall be subject to the duties and obligations imposed by this subchapter in fire prevention and in the investigation of the cause, origin, and circumstances of fires within their jurisdiction.

History. Acts 1955, No. 254, § 4; A.S.A. 1947, § 82-809.

12-13-109. Fire drills.

It shall be the duty of the Director of the Department of Arkansas State Police, his or her officers, and deputies to require teachers of public and private schools and all educational institutions to have one (1) fire drill each month and to keep all doors and exits unlocked during school hours.

History. Acts 1955, No. 254, § 8; A.S.A. 1947, § 82-813.

Cross References. Fire marshal program, § 6-10-110.

12-13-110. Inspection of buildings.

(a)(1) Upon complaint of any person or on their own motion, the Director of the Department of Arkansas State Police and his or her officers or deputies may inspect all buildings and premises within their jurisdiction and issue an order for the compliance with the director's regulations.

(2) Failure or refusal to comply with an order of the director in the enforcement of the regulations shall be a Class A misdemeanor.

(b)(1) The director and his or her officers and deputies shall inspect all places of public assembly, including factories or industrial plants normally employing ten (10) or more persons, where hazards to the lives and safety of citizens might be present.

(2) If upon completion of the inspection an unsafe or hazardous condition is found to exist, then the director shall promptly notify the owner or operator of the public assembly in writing.

(3) Upon the receipt of the written notice, the owner or operator shall remove the hazardous or unsafe condition.

(4)(A) On failure to remedy the condition, the director may file injunction proceedings in the circuit court of the jurisdiction to abate the condition as being a nuisance.

(B) The suit shall be filed in the name of the director for the use and benefit of the State of Arkansas without bond for costs.

History. Acts 1955, No. 254, §§ 7, 11; “misdemeanor and punishable as such” in A.S.A. 1947, §§ 82-812, 82-816; Acts 2005, (a)(2). No. 1994, § 199.

Amendments. The 2005 amendment substituted “Class A misdemeanor” for

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

12-13-111. Investigation of fires.

(a)(1) The deputies to the Director of the Department of Arkansas State Police shall investigate each fire causing loss of life or damage to property within their jurisdiction to determine if the fire was caused by negligence or design.

(2) If it appears that a fire is of suspicious origin or that a crime has been committed in connection therewith, the deputy shall immediately notify the director, who shall promptly initiate an inquiry to ascertain the cause of the fire and the person, if any, responsible therefor.

(b) On his or her own motion and at any time, the director may investigate the origin and circumstances of any fire in this state without restraint or liability for trespass.

(c) Any building or premises may be inspected along with the contents and occupancy thereof.

(d) On request, every fire insurance company licensed in this state shall furnish to the director any information it may have concerning any fire in this state.

History. Acts 1955, No. 254, § 12; A.S.A. 1947, § 82-817.

12-13-112. Inquiries.

(a) When the Director of the Department of Arkansas State Police or any officer or deputy has reason to believe that a crime or other offense has been committed in connection with any fire, the director or his or her deputy may conduct an inquiry in relation thereto.

(b) The inquiry shall be held at such time and place as the director or his or her deputy shall determine.

(c) The director or his or her deputy shall have the power:

(1) Of subpoena to compel the attendance of witnesses to testify at the inquiry and for the production of books, records, papers, other writings, or things deemed material to the inquiry;

(2) To administer oaths or affirmations of witnesses; and

(3) To cause testimony to be taken stenographically, transcribed, and preserved.

(d) The inquiry or examination may be public or private as the director or his or her deputy may determine, and persons other than those required to be present may be excluded from the place thereof.

(e) Witnesses may be kept separate and apart from each other and not allowed to communicate with one another until they have been examined.

(f) Willful false swearing by any witness shall be deemed perjury and be punishable as such.

(g)(1) In case of disobedience of a subpoena, the director or his or her deputy may invoke the aid of the proper circuit court of the jurisdiction to compel the attendance and testimony of witnesses and production of books, papers, written material, and things incident to the inquiry.

(2) The circuit court is empowered to punish as a contempt any disobedience or refusal to obey a subpoena.

(h)(1) No person shall be excused from testifying or producing any books, records, papers, or things, or upon any hearing, when ordered to do so, upon the ground that the testimony or evidence may tend to incriminate him or her or subject him or her to a criminal penalty.

(2)(A) However, no person shall be prosecuted or subjected to criminal liability for or on account of any transaction made or thing concerning which he or she may testify or produce evidence, documentary or otherwise, before the director or his or her deputy.

(B) No person so testifying shall be exempt from prosecution and punishment for perjury committed in his or her testimony.

(i) The prosecuting attorney of any district, upon request of the director or his or her officer or deputy, shall assist in any investigation when called upon to do so.

History. Acts 1955, No. 254, §§ 13, 14;
A.S.A. 1947, §§ 82-818, 82-819.

12-13-113. Service of process, order, or notice.

Any officer of the Department of Arkansas State Police may serve any order, notice, or process issued under the authority of this subchapter. The officer may make a return of service in the same manner as required by law for the return of service of process by a county sheriff of a county.

History. Acts 1955, No. 254, § 15;
A.S.A. 1947, § 82-820.

12-13-114. Civil actions.

(a)(1) No act taken by the Director of the Department of Arkansas State Police shall affect the rights of any policy holder or of any insurance company with regard to a loss by reason of any fire which the director has investigated.

(2) The result of any investigation shall not be given in evidence upon the trial of any civil action upon any policy.

(b) No statement made by any insurance company, its officers or agents, or by anyone representing the insurance company or its officers or agents, made with reference to the origin, cause, or supposed origin or cause of the fire to the director or his or her officers or deputies shall be admitted in evidence or made the basis for any civil action for damages.

History. Acts 1955, No. 254, § 16;
A.S.A. 1947, § 82-821.

12-13-115. Annual report to Governor.

Annually on or before July 1, the Director of the Department of Arkansas State Police shall transmit to the Governor a full report of his or her proceedings under this subchapter, including statistics and recommendations he or she may deem advisable.

History. Acts 1955, No. 254, § 17;
A.S.A. 1947, § 82-822.

12-13-116. Disposition of penalties, fees, and forfeitures.

All penalties, fees, or forfeitures collected under the provisions of this subchapter shall be deposited into the State Treasury to the credit of the Department of Arkansas State Police Fund.

History. Acts 1955, No. 254, § 10;
A.S.A. 1947, § 82-815.

SUBCHAPTER 2 — ARKANSAS FIRE TRAINING ACADEMY

SECTION.

- 12-13-201. Construction, operation, etc.
- 12-13-202. [Repealed.]
- 12-13-203. [Repealed.]

SECTION.

- 12-13-204. Gifts, grants, and donations.
- 12-13-205. Reimbursement for training expenses.

Publisher's Notes. Acts 1987, No. 928, § 11, transferred the Arkansas Fire Training Academy at Camden, and its properties and funds, to the control of the State Board of Vocational Education (abolished and transferred to the State Board of Workforce Education and Career Opportunities) to be under the direction of the Director of the Vocational and Technical Education Division (abolished and transferred to the Department of Workforce Education). It also provided that Academy personnel who were members of a state retirement system were eligible to continue to participate in that system.

Effective Dates. Acts 1973, No. 482, § 5: Mar. 27, 1973. Emergency clause pro-

vided: "It is hereby found and determined by the General Assembly that the construction of a Fire Training Academy is vitally needed in providing fire service training for firemen and other individuals who are responsible for fighting fires, and that the immediate passage of this act is necessary to provide construction funds therefor. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, Nos. 529 and 530, § 6: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the

General Assembly that there is urgent need for the establishment of a Board of Directors for the Arkansas Fire Training Academy to assure that the curriculum and training provided at the academy are of the highest quality; that the course of training offered at the Arkansas Fire Training Academy affects the safety and well-being of all the citizens in Arkansas since local fire fighting personnel are trained at the academy; that this act is designed to provide for the establishment of a board to have the primary responsibility for governing the Arkansas Fire Training Academy and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 928, § 16: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly that the amendments to the Revenue Stabilization Law are essential to the continued operation of state government; therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1987."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it

shall become effective on the date the last house overrides the veto."

Acts 2001, No. 178, § 3: Feb. 9, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that Act 928 of 1987 purported to transfer the Fire Training Academy from Southern Arkansas University, SAU — Tech to the Vocational-Technical Division of the Department of Education; that the Pulaski County Chancery Court determined that the transfer was in violation of Amendment 33 to the Arkansas Constitution and therefore invalidated the transfer; and that this act is necessary to clarify the law regarding the Fire Training Academy to restate that the Fire Training Academy is under the control of the Southern Arkansas University, SAU — Tech. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1459, § 7: Apr. 16, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that fire protection services in this state are not being adequately addressed by the existing boards responsible for these services; that some fire protection services are being duplicated by the various boards; and that this act is immediately necessary because without proper services for our firefighters, their lives could be at risk. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-13-201. Construction, operation, etc.

The Arkansas Fire Training Academy shall be under the control of SAU-Tech of Southern Arkansas University, and the university shall maintain and operate a fire service training program at the academy.

History. Acts 1973, No. 482, § 4; 1993, No. 447, § 6; 2001, No. 178, § 1.

A.C.R.C. Notes. Acts 1987, No. 928, § 11, repealed by Acts 2001, No. 178, § 3, transferred the Arkansas Fire Training Academy at Camden, and its properties and funds, to the control of the State Board of Vocational Education (abolished and transferred to the State Board of

Workforce Education and Career Opportunities) to be under the direction of the Director of the Vocational and Technical Education Division (abolished and transferred to the Department of Workforce Education). It also provided that Academy personnel who were members of a state retirement system were eligible to continue to participate in that system.

12-13-202. [Repealed.]

Publisher's Notes. This section, concerning the creation of the Arkansas Fire Training Academy Board, was repealed by Acts 2003, No. 1459, § 4. The section was

derived from Acts 1983, No. 529, §§ 1-3; 1983, No. 530, §§ 1-3; A.S.A. 1947, §§ 82-151 — 82-853; Acts 1997, No. 250, § 68.

12-13-203. [Repealed.]

Publisher's Notes. This section, concerning the duties of the Arkansas Fire Training Academy Board, was repealed by Acts 2003, No. 1459, § 5. The section was

derived from Acts 1983, No. 529, § 4; 1983, No. 530, § 4; A.S.A. 1947, § 82-854; Acts 1993, No. 447, § 7.

12-13-204. Gifts, grants, and donations.

SAU-Tech of Southern Arkansas University is authorized to accept and receive gifts, grants, and donations for the operations and improvement of the Arkansas Fire Training Academy.

History. Acts 1987, No. 928, § 13; 2001, No. 178, § 2.

12-13-205. Reimbursement for training expenses.

(a)(1) If any county, city, or town pays the cost or expenses for training a firefighter at the Arkansas Fire Training Academy or other like program and another county, city, or town or an agency of the State of Arkansas employs that firefighter within eighteen (18) months after completion of the training in a position requiring a certificate of training from the Arkansas Fire Training Academy, the state agency, county, city, or town so employing the firefighter, at the time of employing the firefighter, shall reimburse the county, city, or town for all or a portion of the expenses incurred by the county, city, or town for the training of the firefighter at the academy, unless the firefighter has been terminated by the county, city, or town which paid the costs or

expenses of training, in which case no reimbursement is required from the state agency, county, city, or town hiring the firefighter.

(2) Reimbursement may only be sought from the first state agency, county, city, or town which employs the firefighter after another county, city, or town has paid the costs or expenses of training.

(3) Reimbursement shall include any salary, travel expenses, food, lodging, or other costs required to be paid by the county, city, or town, as follows:

(A) If the person is employed within two (2) months after completion of the training, the employing agency shall reimburse the total cost of the training;

(B) If the person is employed more than two (2) months but not more than six (6) months after completion of the training, the employing agency shall reimburse eighty percent (80%) of the cost of the training;

(C) If the person is employed more than six (6) months but not more than ten (10) months after completion of the training, the employing agency shall reimburse sixty percent (60%) of the cost of the training;

(D) If the person is employed more than ten (10) months but not more than fourteen (14) months after completion of the training, the employing agency shall reimburse forty percent (40%) of the cost of the training; or

(E) If the person is employed more than fourteen (14) months but not more than eighteen (18) months after completion of the training, the employing agency shall reimburse twenty percent (20%) of the cost of the training.

(4) If the person is employed more than eighteen (18) months after completion of the training, no reimbursement is required.

(b)(1) If any county, city, town, or state agency which employs a firefighter whose training expense was paid by another county, city, or town fails to make reimbursement for the expenses as required in subsection (a) of this section, the county, city, or town entitled to reimbursement shall notify the Treasurer of State.

(2) The Treasurer of State shall then withhold the amount of the reimbursement due for training the firefighter from the county or municipal aid of the employing county, city, or town or from funds appropriated to the employing state agency and shall remit the amount to the county, city, or town which is entitled to the reimbursement under the provisions of this section.

History. Acts 2001, No. 66, § 1.

SUBCHAPTER 3 — ARSON REPORTING-IMMUNITY ACT

SECTION.

12-13-301. Title.

12-13-302. Definitions.

12-13-303. Disclosure of information.

SECTION.

12-13-304. Confidentiality.

12-13-305. Enforcement.

Effective Dates. Acts 1981, No. 123, § 7; Feb. 19, 1981. Emergency clause provided: "The General Assembly hereby finds and determines that arson has become an epidemic in this state; that law enforcement and other authorized agencies need access to the files of insurers to more effectively fight the crime; that insurers need immunity from liability for

furnishing their suspected arson files to authorized agencies; and that this act is immediately necessary to provide such immunity. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Arkansas Law Survey, Jackson, Torts, 9 U. Ark. Little Rock L.J. 207.

12-13-301. Title.

This subchapter shall be known as the "Arson Reporting-Immunity Act".

History. Acts 1981, No. 123, § 1; A.S.A. 1947, § 66-5601.

12-13-302. Definitions.

As used in this subchapter:

- (1) "Action" includes nonaction or the failure to take action;
- (2) "Authorized agencies" means any law enforcement agency or agency or instrumentality of this state, of a county or municipality, or of the federal government which is charged with the responsibility of investigating fires;
- (3) "Immune" means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this subchapter when actual malice on the part of the insurer or its representative against the insured is not present;
- (4) "Insurer" shall include every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance;
- (5) "Named insured" means the person whose name appears on the face of the policy as the insured individual; and
- (6) "Relevant information" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the information.

History. Acts 1981, No. 123, §§ 2, 3; A.S.A. 1947, §§ 66-5602, 66-5603.

12-13-303. Disclosure of information.

(a) Any authorized agency may, in writing, require the insurer at interest to release to the requesting agency relevant information relating to the fire loss in question which may include, but is not limited to:

- (1) Policy premium payment records;
- (2) History of previous claims made by the insured; and
- (3) Material relating to the insurer's investigation of the fire loss.

(b)(1) Any insurer having reason to believe that a fire loss in which it has an interest may be of other than accidental cause shall, in writing, notify an authorized agency of the finding.

(2) When an insurer notifies any one (1) of the authorized agencies pursuant to this subchapter, it shall be sufficient notice for the purpose of this subchapter.

(3) Nothing in this subsection shall abrogate or impair the rights or powers created under subsection (a) of this section.

(c) The authorized agency provided with information pursuant to subsection (a) or (b) of this section and in furtherance of its own purposes may release or provide the information to any other authorized agency of this or another state, or of the United States to the extent that its disclosure or use is relevant to a loss by fire of real or personal property which is under investigation by the authorized agency.

(d)(1) When an insurer enters into a contract of insurance against fire loss with the insured, the requirements of this subchapter must be disclosed in writing to the insured.

(2) Any insurer providing information to an authorized agency pursuant to this subchapter shall notify its insured in writing of such an action no later than ninety (90) days after the action has been taken. A copy of the report furnished the authorized agency shall be furnished to the insured upon the commencement of civil action or criminal prosecution.

(e) Any insurer, or a person acting on its behalf, shall be immune from liability in any civil or criminal proceeding for any statement made or action required by this subchapter when actual malice on the part of the insurer or its representative is not present.

History. Acts 1981, No. 123, § 3; 1983, No. 415, § 1; A.S.A. 1947, § 66-5603.

Cross References. False claims or proofs, § 23-66-301.

CASE NOTES**Admissibility of Evidence.**

Insurer's violation of notification requirement of this section was relevant to bad faith claim; consequently, testimony concerning insurer's noncompliance

should have been admitted and instructions setting out requirements of this subchapter should have been given. *Thomas v. Farm Bureau Ins. Co.*, 287 Ark. 313, 698 S.W.2d 508 (1985).

12-13-304. Confidentiality.

Any information furnished to any authorized agency pursuant to this subchapter shall be held in confidence by the authorized agency and shall be released only for use in a civil or criminal proceeding as authorized by a court of competent jurisdiction.

History. Acts 1981, No. 123, § 4; A.S.A. 1947, § 66-5604.

12-13-305. Enforcement.

(a) No person shall knowingly refuse to provide authorized agencies with relevant information pursuant to this subchapter.

(b) No person shall fail to hold in confidence information required to be held in confidence by this subchapter.

(c) Whoever violates this section is guilty of a Class A misdemeanor.

History. Acts 1981, No. 123, § 5; A.S.A. 1947, § 66-5605.

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

CHAPTER 14

STATE CAPITOL POLICE

SECTION.

12-14-101. Establishment — Powers.

12-14-102. Duties — Authority.

12-14-103. Rules and regulations.

12-14-104. Territory — Cumulative remedies.

12-14-105. Enforcement — Fines.

SECTION.

12-14-106. Additional salary payments.

12-14-107. Assignment of officer to Senate.

12-14-108. Award of pistol upon retirement.

Effective Dates. Acts 1989, No. 468, § 7: Mar. 10, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present laws protection of the State Capitol grounds is inadequate; that this act is designed to maintain proper order and decorum, prevent unlawful assemblies, exclude and eject persons detrimental to the well-being of the State Capitol grounds and regulate the operation and parking of motor vehicles in the Capitol Zoning District and that this law should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 976, § 25: July 1, 1997. Emergency clause provided: "It is hereby

found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

12-14-101. Establishment — Powers.

(a) In such a manner as will most effectually secure the citizens and their property in and around the State Capitol, the Secretary of State may:

- (1) Establish the State Capitol Police;
- (2) Organize the State Capitol Police;
- (3) Prescribe the State Capitol Police's duties; and
- (4) Define the State Capitol Police's powers.

(b)(1) The Secretary of State may designate and appoint one (1) or more of his or her employees as State Capitol Police, who shall be peace officers under the laws of the state and shall have and possess all the powers provided by the law for Arkansas State Police, city police, and county sheriffs to be exercised as required for the protection of the State Capitol grounds, together with such other duties as may be assigned by the Secretary of State.

(2) An officer of the State Capitol Police may act in his or her official capacity and exercise his or her powers anywhere within the boundaries of the State of Arkansas.

(c) None of the present jurisdiction or powers of the Department of Arkansas State Police, county police, or city police shall be ceded to the State Capitol Police over the land or property which constitutes the State Capitol grounds or within the boundaries of the State of Arkansas.

History. Acts 1989, No. 468, § 1; 2005, No. 167, § 1.

Amendments. The 2005 amendment added the subdivision (1) designation in

(b); added (b)(2); and added "or within the boundaries of the State of Arkansas" at the end of (c).

12-14-102. Duties — Authority.

(a) Except to the extent otherwise limited by the Secretary of State, State Capitol Police appointed pursuant to the authority contained in this chapter shall:

- (1) Protect property;
- (2) Preserve and maintain proper order and decorum;
- (3) Prevent unlawful assemblies and disorderly conduct;
- (4) Exclude and eject persons from and prevent trespass upon and in all of the State Capitol grounds and other grounds, buildings, improvements, streets, alleys, and sidewalks under control of the Secretary of State; and

(5) Have the authority to regulate the operation and parking of motor vehicles upon the State Capitol grounds and other grounds under control of the Secretary of State and upon all streets adjoining and traversing the State Capitol grounds, as long as it does not impede normal traffic patterns.

(b) The State Capitol Police officers shall have and exercise police supervision on behalf of the Secretary of State and are authorized as peace officers to arrest, with or without warrant, any person upon or in

the areas described in this section or within the boundaries of the State of Arkansas who is or is reasonably believed to be committing an offense against any laws of the State of Arkansas or against the ordinances of the city where the State Capitol grounds are located, and to deliver the person before any court of competent jurisdiction to be dealt with according to law.

History. Acts 1989, No. 468, § 1; 2005, No. 167, § 2. inserted “or within the boundaries of the State of Arkansas” in (b).

Amendments. The 2005 amendment

12-14-103. Rules and regulations.

The Secretary of State is hereby authorized and empowered to promulgate rules and regulations, and to amend or change the same from time to time as he or she shall deem necessary, providing for the operation and organization of the State Capitol Police, so long as such rules and regulations are not arbitrary or capricious.

History. Acts 1989, No. 468, § 1.

12-14-104. Territory — Cumulative remedies.

(a)(1) This chapter shall apply to and encompass all lands, buildings, and improvements that are commonly referred to as the State Capitol grounds and additional areas set out in this section and that are bounded as follows: Beginning at the point where the centerline of Tenth Street intersects the eastern edge of the right-of-way of the Missouri Pacific and Rock Island Railroad Line, then northeast along the southern boundary of that right-of-way to the point where the centerline of Cross Street, extended northeast, intersects that right-of-way, then south along the centerline of Cross Street to the point where that line intersects the northern edge of the Wilbur Mills Freeway, also known as I-630, surveyed by the Arkansas State Highway and Transportation Department, to the point of the beginning.

(2) However, nothing in this chapter shall be interpreted as in any way interfering with the ownership and control that are by law now vested in the governing boards of each department as to its lands, buildings, and improvements.

(b) The provisions of this chapter shall be cumulative to any remedies that each department may now possess for enforcing its rules and regulations, including its rights to:

- (1) Impose sanctions through fees and charges;
- (2) Discipline;
- (3) Deny service; and
- (4) Expel.

History. Acts 1989, No. 468, § 1; 2001, No. 1082, § 1.

12-14-105. Enforcement — Fines.

(a) The prosecuting attorney or the city attorney, as may be appropriate, shall appear and prosecute all actions arising in any court under the provisions of this chapter.

(b) All fines which may be collected by any court on account of the violation of this chapter shall be remitted by the tenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office, to be deposited into the State Treasury and placed to the credit of the State Capitol Police.

History. Acts 1989, No. 468, § 1; 2003, No. 1765, § 6.

12-14-106. Additional salary payments.

(a) In the event that sufficient revenues in the judgment of the Secretary of State exist, the Secretary of State may make additional salary payments from those funds to those employees who have attained law enforcement certification above the basic certificate level, as defined by the Arkansas Commission on Law Enforcement Standards and Training.

(b) It is the intent of this section that the payment shall be optional, at the discretion of the Secretary of State, dependent on sufficient revenues, and shall not be implemented using funds specifically set aside for other programs within the office of the Secretary of State.

(c)(1) Employees shall be eligible for all or a portion of additional salary payments scheduled as follows:

- (A) General certificate — three hundred dollars (\$300) annually;
- (B) Intermediate certificate — six hundred dollars (\$600) annually;
- (C) Advanced certificate — nine hundred dollars (\$900) annually; and
- (D) Senior certificate — one thousand two hundred dollars (\$1,200) annually.

(2) Payment of additional salary payments may be made monthly, quarterly, semiannually, or annually depending upon the availability of revenues and shall be restricted to the following classifications:

- (A) State Capitol Police Chief;
- (B) State Capitol Police Assistant Chief;
- (C) State Capitol Police sergeant; and
- (D) State Capitol Police corporal.

(d)(1) Payments made under this section which are awarded as partial or lump-sum payments shall not be considered as salary for purposes of retirement benefits but shall be subject to withholding of all applicable federal and state taxes.

(2) Payments made under this section shall not be construed as exceeding the maximum annual salary of the employee.

History. Acts 1997, No. 976, § 18; 2005, No. 167, § 3.

A.C.R.C. Notes. Acts 2009, No. 442, § 16, provided: "In the event that sufficient revenues, in the judgment of the Secretary of State exist, the Secretary is hereby authorized to make additional salary payments from such funds to those employees who have attained law enforcement certification above the basic certificate level, as defined by the Arkansas Commission on Law Enforcement Standards. It is the intent of this Section that such payment shall be optional, at the discretion of the Secretary, dependent on sufficient revenues and shall not be implemented using funds specifically set aside for other programs within the Department.

"Employees shall be eligible for all or a portion of additional salary payments scheduled as follows:

"I. General Certificate — \$ 300 annually

"II. Intermediate Certificate — \$ 600 annually

"III. Advanced Certificate — \$ 900 annually

"IV. Senior Certificate — \$ 1,200 annually

"Payment of such funds may be made monthly, quarterly, semiannually or annually depending upon the availability of revenues and shall be restricted to the following classifications:

"1. Sec. of State Capitol Police Chief

"2. Sec. of State Police Sergeant

"3. Sec. of State Corporal

"4. Sec. of State Assistant Chief

"Payments made under this Section which are awarded as partial or lump sum payments shall not be considered as salary for purposes of retirement benefits but shall be subject to withholding of all applicable federal and state taxes. Payments made under this Section shall not be construed as exceeding the maximum annual salary of the employee.

"The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010."

Amendments. The 2005 amendment inserted present (c)(2)(B) and redesignated the remaining subdivisions accordingly.

Cross References. Additional salary payments for Arkansas State Police, § 12-8-215.

12-14-107. Assignment of officer to Senate.

(a)(1) Upon request, one (1) member of the State Capitol Police shall be assigned to the Senate.

(2) The officer shall be selected by the Senate Efficiency chair or his or her designee in charge of security procedures for the Senate.

(b) The officer shall remain a full-time employee of the State Capitol Police with accrued benefits and remain on duty with the State Capitol Police when not on call with the Senate.

History. Acts 1997, No. 976, § 19.

12-14-108. Award of pistol upon retirement.

When a State Capitol Police officer retires from service or dies while still employed with the State Capitol Police, in recognition of and appreciation for the service of the retiring or deceased officer, the Secretary of State may award the pistol carried by the officer at the time of his or her death or retirement from service to:

(1) The officer; or

(2) The officer's spouse if the spouse is eligible under applicable state and federal laws to possess a firearm.

History. Acts 2005, No. 167, § 4.

CHAPTER 15

WEAPONS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. CONCEALED HANDGUN PERMITS.
3. LAW ENFORCEMENT PERSONNEL.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — CONCEALED HANDGUN PERMITS

SECTION.

- 12-15-201. Definitions.
- 12-15-202. Eligibility to carry concealed handgun.

SECTION.

- 12-15-203. [Repealed.]

12-15-201. Definitions.

As used in this subchapter:

(1) “Certified law enforcement officer” means any appointed or elected law enforcement officer or county sheriff employed by a public law enforcement department, office, or agency who:

(A) Is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state; and

(B) Has met the selection and training requirements for certification set by the Arkansas Commission on Law Enforcement Standards and Training; and

(2) “Public law enforcement department, office, or agency” means any public police department, county sheriff’s office, or other public agency, force, or organization whose primary responsibility as established by law, statute, or ordinance is the enforcement of the criminal, traffic, or highway laws of this state.

History. Acts 1995, No. 1332, § 2; deleted former (1)(A) and redesignated 2007, No. 675, § 1. the remaining subsections accordingly.

Amendments. The 2007 amendment

12-15-202. Eligibility to carry concealed handgun.

(a) Any certified law enforcement officer may carry a concealed handgun if that officer is:

(1) Presently in the employ of a public law enforcement department, office, or agency;

(2) Authorized by the public law enforcement department, office, or agency to carry a firearm in the course and scope of his or her duties;

(3) Not subject to any disciplinary action by the public law enforcement department, office, or agency;

(4) Carrying a badge and appropriate written identification issued by the public law enforcement department, office, or agency identifying him or her as a certified law enforcement officer; and

(5) Not otherwise prohibited under federal law.

(b)(1) A concealed handgun may be carried by any retired law enforcement officer who:

(A) Retired from service with a public law enforcement department, office, or agency for reasons other than mental disability;

(B) Immediately before retirement was a certified law enforcement officer authorized by a public law enforcement department, office, or agency to carry a firearm in the course and scope of his or her duties;

(C) Is carrying appropriate written identification issued by a public law enforcement department, office, or agency identifying him or her as a retired and former certified law enforcement officer;

(D) Is not otherwise prohibited under federal law;

(E) Has fingerprint impressions on file with the Department of Arkansas State Police together with written authorization for state and national level criminal history record screening; and

(F) During the most recent twelve-month period has met, at the expense of the retired law enforcement officer, the standards of this state for training and qualification for active law enforcement officers to carry firearms.

(2)(A) The chief law enforcement officer of the city or county shall keep a record of all retired law enforcement officers authorized to carry a concealed handgun in his or her jurisdiction and shall revoke any authorization for good cause shown.

(B) The Director of the Department of Arkansas State Police shall keep a record of all retired department officers authorized to carry a concealed handgun in the state and shall revoke any authorization for good cause shown.

(c)(1)(A) A firearms instructor certified by the Arkansas Commission on Law Enforcement Standards and Training who is employed by any law enforcement agency in this state may certify or recertify that a retired law enforcement officer has met the training and qualification requirements for certification set by the commission for active law enforcement officers to carry firearms.

(B) A retired law enforcement officer shall pay the expenses for meeting the training and qualification requirements described in subdivision (c)(1)(A) of this section.

(2) A firearms instructor who certifies or recertifies that a retired law enforcement officer has met the training and qualification requirements for certification set by the commission for active law enforcement officers to carry firearms under subdivision (c)(1)(A) of this section shall complete and submit any required paperwork to the commission.

(d) Any certified law enforcement officer or retired law enforcement officer carrying a concealed handgun under this section is not subject to the prohibitions and limitations of § 5-73-306.

(e)(1) Any presently employed certified law enforcement officer authorized by another state to carry a concealed handgun shall be entitled

to the same privilege while in this state, but subject to the same restrictions of this section, provided that the state which has authorized the officer to carry a concealed handgun extends the same privilege to presently employed Arkansas-certified law enforcement officers.

(2) The director shall make a determination as to which states extend the privilege to carry a concealed handgun to presently employed Arkansas-certified law enforcement officers and shall then determine which states' officers' authority to carry concealed handguns will be recognized in Arkansas.

History. Acts 1995, No. 1332, § 1; 1997, No. 92, § 1; 1997, No. 302, § 1; 2001, No. 251, § 1; 2001, No. 585, § 1; 2003, No. 348, § 1; 2007, No. 134, § 1; 2007, No. 675, § 2. by No. 134 inserted (b)(1)(G) and (c), and redesignated the following subdivisions accordingly; and made related changes. The 2007 amendment by No. 675 deleted former (b)(1)(C) and redesignated the remaining subsections accordingly.

Amendments. The 2007 amendment

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Law Enforcement and Emergency

Management, Concealed Handgun, 26 U. Ark. Little Rock L. Rev. 428.

12-15-203. [Repealed.]

Publisher's Notes. This section, concerning duties of board members, was repealed by Acts 1999, No. 1133, § 2. The

section was derived from Acts 1995, No. 1332, § 3.

SUBCHAPTER 3 — LAW ENFORCEMENT PERSONNEL

SECTION.

12-15-301. Sale of county-issued firearms to deputies.

12-15-301. Sale of county-issued firearms to deputies.

(a)(1) When any county sheriff's deputy retires or otherwise honorably terminates employment with the county sheriff, the officer may purchase any firearm which had been issued to the officer by the county sheriff.

(2) The county sheriff, with the approval of the county judge, may sell the firearm to the deputy at its fair market value as determined by the county sheriff.

(b) In regard to the sale of such firearms, the county sheriff is not required to comply with any other law of this state regarding the sale of county property.

History. Acts 1999, No. 451, § 1.

CHAPTER 16

MULTIJURISDICTIONAL COOPERATION

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]

2. DRUG AND CONTROLLED SUBSTANCE LAWS — MULTIJURISDICTIONAL ENFORCEMENT GROUPS FOR THE ENFORCEMENT OF DRUG AND CONTROLLED SUBSTANCE LAWS.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — DRUG AND CONTROLLED SUBSTANCE LAWS — MULTIJURISDICTIONAL ENFORCEMENT GROUPS FOR THE ENFORCEMENT OF DRUG AND CONTROLLED SUBSTANCE LAWS

SECTION.

12-16-201. Drug and controlled substance laws — Multijuris-

dictional enforcement groups.

12-16-201. Drug and controlled substance laws — Multijurisdictional enforcement groups.

(a) A county bordering another state may enter into an agreement with the political subdivisions in such other state's contiguous county or parish pursuant to the Interlocal Cooperation Act, § 25-20-101 et seq., to form a multijurisdictional enforcement group for the enforcement of drug and controlled substance laws.

(b) Such other state's law enforcement officers may be deputized as officers of the counties of this state participating in an agreement pursuant to this section and shall be deemed to have met all requirements of law enforcement officer training and certification pursuant to § 12-9-101 et seq. for the purposes of conducting investigations and making arrests in this state provided such officers have satisfied the applicable law enforcement officer training and certification standards in force in such other state.

(c) The other state's law enforcement officers shall have the same powers and immunities when working under an agreement pursuant to this section as do law enforcement officers of this state.

(d) A multijurisdictional enforcement group formed pursuant to this section is eligible to receive state grants to help defray the costs of its operation.

(e) The provisions of subsections (b)-(d) of this section shall not be in force unless the other state has provided legal authority for its political subdivisions to enter into such agreements and to extend reciprocal powers and privileges to the law enforcement officers of this state working pursuant to such agreements.

History. Acts 1999, No. 1483, § 1.

CHAPTER 17

STATE DRUG CRIME ENFORCEMENT AND PROSECUTION GRANT FUND

SECTION.

- 12-17-101. Definitions.
 12-17-102. State Drug Crime Enforcement and Prosecution Grant Fund established.
 12-17-103. Grant application and administration process.

SECTION.

- 12-17-104. Determination of grant awards.
 12-17-105. Matching funds.
 12-17-106. Drug crime special assessment.
 12-17-107. Specific use of grant awards.

Effective Dates. Acts 2007, No. 1086, § 2: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that law enforcement officials throughout the state require increased resources to combat drug crimes; that this act provides needed financial relief and will escalate efforts throughout the state to prevent the use and spread of drugs; and that this act should become effective as soon as possible to effectuate its intent."

Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-17-101. Definitions.

As used in this chapter:

(1) "Drug crime" means a misdemeanor or felony criminal offense prosecuted in district court or circuit court that violates:

(A) Any provision of the Uniform Controlled Substances Act, § 5-64-401 et seq., or any solicitation, attempt, or conspiracy to violate the Uniform Controlled Substances Act, § 5-64-401 et seq.;

(B) Any criminal violation of state law, or any solicitation, attempt, or conspiracy to violate state law, committed for the purpose of unlawfully acquiring, obtaining, manufacturing, purchasing, procuring, possessing, distributing, delivering, shipping, or transporting controlled substances, prescription drugs, drug paraphernalia, or precursor chemicals or components used to manufacture controlled substances;

(C) Any criminal violation of state or federal law, or any solicitation, attempt, or conspiracy to violate state or federal law involving the use or possession of any fraudulent, falsified, forged, or altered identification card or document evidencing the identity of an individual, issued or purportedly issued by any state, federal, or foreign government, for the purpose of unlawfully acquiring, obtaining, manufacturing, purchasing, procuring, possessing, distributing, delivering, shipping or transporting controlled substances, prescription

drugs, drug paraphernalia, precursor chemicals or components used to manufacture controlled substances;

(D) Any criminal violation of state or federal law, or any solicitation, attempt, or conspiracy to violate state or federal law, for the purpose of committing any act that constitutes money laundering, as defined by § 5-42-204, of proceeds and profits related to violations of the Uniform Controlled Substances Act, § 5-64-401 et seq.; or

(E) Any criminal violation of state or federal law or any solicitation, attempt, or conspiracy thereof, involving any firearm, deadly weapon, or explosive device used or possessed with intent to use:

(i) To enforce or facilitate any criminal act defined under the Uniform Controlled Substances Act, § 5-64-401 et seq.; or

(ii) To commit a criminal offense defined by Arkansas law that intimidates, threatens, injures, maims, or kills any law enforcement officer, prosecutor, judicial officer, or any other court official, witness, informant, or juror involved in the investigation or prosecution of any violation of the Uniform Controlled Substances Act, § 5-64-401 et seq.;

(2) “Investigate” means any law enforcement activities directed toward drug crimes, including without limitation prevention, eradication, investigation, and interdiction;

(3) “Law enforcement agency” means:

(A) Any county sheriff’s office of any county in this state;

(B) Any municipal police department of an organized city or town within this state; and

(C) The Department of Arkansas State Police;

(4) “Multi-jurisdictional drug crime task force” means an association consisting of a minimum of two (2) law enforcement agencies and one (1) prosecuting attorney acting by agreement to jointly investigate and prosecute drug crimes in a defined geographic area or judicial district; and

(5) “Prosecuting attorney” means the elected prosecuting attorney for any judicial district, including without limitation appointed deputies and investigators.

History. Acts 2007, No. 1086, § 1.

12-17-102. State Drug Crime Enforcement and Prosecution Grant Fund established.

(a) There is hereby established and created on the books of the Chief Fiscal Officer of the State, the Treasurer of State, and the Auditor of State a special revenue fund to be known as the “State Drug Crime Enforcement and Prosecution Grant Fund” for the purpose of funding state grant awards for multi-jurisdictional drug crime task forces to investigate and prosecute drug crimes within the State of Arkansas.

(b) The fund shall consist of:

(1) Revenues generated under § 12-17-106; and

(2) Any moneys authorized by the General Assembly.

History. Acts 2007, No. 1086, § 1.

12-17-103. Grant application and administration process.

(a) The Department of Finance and Administration shall develop and promulgate grant applications under this chapter and upon the recommendations of the Arkansas Alcohol and Drug Abuse Coordinating Council.

(b) The department shall administer all grant awards and expenditures under this chapter by the multi-jurisdictional drug crime task forces under applicable state and federal law.

History. Acts 2007, No. 1086, § 1.

12-17-104. Determination of grant awards.

The Arkansas Alcohol and Drug Abuse Coordinating Council shall:

(1) Develop and promulgate by rule criteria for the grant applications and awards process under this chapter;

(2) Review all grant applications under this chapter;

(3) Determine which applicant or applicants should receive grant awards under this chapter; and

(4) Retain oversight of all grant expenditures under this chapter.

History. Acts 2007, No. 1086, § 1.

12-17-105. Matching funds.

(a) Any multi-jurisdictional drug crime task force receiving a grant award under this chapter shall contribute local matching funds in an amount not less than twenty percent (20%) of the total grant award.

(b) The source of local matching funds shall be from county or municipal general revenue appropriations or authorized drug control fund disbursements of any participating multi-jurisdictional drug crime task force member agency.

(c) The Department of Finance and Administration shall restrict distribution of any grant award to a multi-jurisdictional drug crime task force if it is determined that local matching funds are not appropriated or available.

History. Acts 2007, No. 1086, § 1.

12-17-106. Drug crime special assessment.

(a) There is hereby established a drug crime special assessment to be levied by the district courts or circuit courts of this state in the sum of one hundred twenty-five dollars (\$125) against any person who is convicted of or enters a plea of guilty or nolo contendere to any felony or misdemeanor offense the court determines to be a drug crime.

(b) The drug crime special assessment shall be collected by the entity or office designated to collect fines and costs within the jurisdiction.

(c)(1) All drug crime special assessments collected shall be remitted by the county official, city official, agency, or department designated in § 16-13-709 as primarily responsible for the collection of fines assessed in the circuit courts, district courts, or city courts on or before the fifteenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration, for deposit into the State Drug Crime Enforcement and Prosecution Grant Fund, as established by § 12-17-102.

(2) A form provided by the section identifying the amount of the special assessments shall be transmitted with the collected special assessments.

History. Acts 2007, No. 1086, § 1; inserted “drug crime” in (b); and rewrote 2009, No. 165, § 13. (c).

Amendments. The 2009 amendment

12-17-107. Specific use of grant awards.

(a) Grant awards under this chapter shall be used specifically for:

- (1) Salaries;
- (2) Personal services matching;
- (3) Overtime;
- (4) Maintenance and general operations;
- (5) Evidentiary purchases of controlled substances or information;
- (6) Informant and witness compensation;
- (7) Rent;
- (8) Utilities;
- (9) Telecommunications;
- (10) Fuel;
- (11) Vehicle maintenance and repair;
- (12) In-state training; and
- (13) Travel expenses.

(b) Each grant award shall specifically provide for accounting and fiscal officer services.

(c) No grant awards shall be used for capital outlay or equipment purchases that exceed a cost of one thousand five hundred dollars (\$1,500) per item.

History. Acts 2007, No. 1086, § 1.

CHAPTER 18

CHILD MALTREATMENT ACT

SUBCHAPTER

- 1. GENERAL PROVISIONS.**
- 2. OFFENSES AND PENALTIES.**
- 3. CHILD ABUSE HOTLINE.**
- 4. REPORTING SUSPECTED CHILD MALTREATMENT.**
- 5. NOTICE PROCEDURES AFTER A REPORT OF SUSPECTED CHILD MALTREATMENT HAS BEEN MADE.**

SUBCHAPTER

6. INVESTIGATIVE PROCEEDINGS.
7. INVESTIGATIVE FINDINGS.
8. ADMINISTRATIVE HEARINGS.
9. CHILD MALTREATMENT CENTRAL REGISTRY.
10. PROTECTIVE CUSTODY.
11. PUBLIC DISCLOSURE OF INFORMATION ON FATALITIES AND NEAR FATALITIES.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-18-101. Title.
12-18-102. Purpose.
12-18-103. Definitions.
12-18-104. Confidentiality.

SECTION.

- 12-18-105. Rules.
12-18-106. Cooperative agreements.
12-18-107. Liability.

12-18-101. Title.

This chapter shall be known and may be cited as the “Child Maltreatment Act”.

History. Acts 2009, No. 749, § 1.

12-18-102. Purpose.

The purpose of this chapter is to:

- (1) Provide a system for the reporting of known or suspected child maltreatment;
- (2) Ensure the immediate screening, safety assessment, and prompt investigation of reports of known or suspected child maltreatment;
- (3) Ensure that immediate steps are taken to:
 - (A) Protect a maltreated child and any other child under the same care who may also be in danger of maltreatment; and
 - (B) Place a child who is in immediate danger of severe maltreatment in a safe environment;
- (4) Provide immunity from criminal prosecution for an individual making a good faith report of suspected child maltreatment;
- (5) Preserve the confidentiality of all records in order to protect the rights of the child and of the child’s parents or guardians;
- (6) Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation, assessment, prosecution, and treatment of child maltreatment; and
- (7) Stabilize the home environment if a child’s health and safety are not at risk.

History. Acts 2009, No. 749, § 1.

12-18-103. Definitions.

As used in this chapter:

- (1) “Abandonment” means the failure of a parent to:

(A) Provide reasonable support and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future and support or maintain regular contact with a child without just cause; or

(B) An articulated intent to forego parental responsibility.

(C) "Abandonment" does not include acts or omissions of a parent toward a married minor;

(2)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor:

(i) Extreme or repeated cruelty to a child;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;

(iv) Any injury that is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face or head; or

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child six (6) years of age or younger on the face or head;

(b) Shaking a child three (3) years of age or younger;

(c) Interfering with a child's breathing;

(d) Pinching, biting, or striking a child in the genital area;

(e) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

(f) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

(g) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

(1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) A narcotic; or

(4) An over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;

(h) Exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine; or

(i) Subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel.

(B)(i) The list in subdivision (2)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) "Abuse" shall not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child.

(ii) "Abuse" shall not include when a child suffers transient pain or minor temporary marks as the result of an appropriate restraint if:

(a) The person exercising the restraint is an employee of an agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The agency has policy and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

(d) The child is in danger or hurting himself or herself or others;

(e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;

(f) The restraint is for a reasonable period of time; and

(g) The restraint is in conformity with training and agency policy and procedures.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and which does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(3) "Caretaker" means a parent, guardian, custodian, foster parent, or any person ten (10) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, includ-

ing, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare, but excluding the spouse of a minor;

(4)(A) "Central intake", otherwise referred to as the "Child Abuse Hotline", means a unit that shall be established by the Department of Human Services for the purpose of receiving and recording notification made pursuant to this chapter.

(B) The Child Abuse Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;

(5) "Child" or "juvenile" means an individual who is from birth to eighteen (18) years of age;

(6) "Child maltreatment" means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;

(7) "Department" means the Department of Human Services;

(8) "Deviate sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person;

(9)(A)(i) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of physical injury to or death, rape, sexual abuse, or kidnapping of any person.

(ii) If the act was committed against the will of the child, then forcible compulsion has been used.

(B) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion;

(10) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(11) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or of any other person under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(12) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition;

(13)(A) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school,

or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of the married minor, which constitute:

(i) Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;

(ii) Failure or refusal to provide necessary food, clothing, shelter, and education required by law, excluding the failure to follow an individualized educational program, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child;

(v) Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility; or

(vii) Failure to appropriately supervise the child that results in the child's being left alone at an inappropriate age or in inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm.

(B)(i) "Neglect" shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) As used in this subdivision (13)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (13)(B)(i)(a) of this section.

(iv) A test of the mother's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (13)(B)(i)(b) of this section;

(14) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of

conception or birth or who has been found by a court of competent jurisdiction to be the biological father of the child;

(15) "Pornography" means:

(A) Pictures, movies, or videos that lack serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(16) "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(17) "Severe maltreatment" means sexual abuse, sexual exploitation, acts or omissions that may or do result in death, abuse involving the use of a deadly weapon as defined by § 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child;

(18) "Sexual abuse" means:

(A) By a person ten (10) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live sexual activity;

(B) By a person eighteen (18) years of age or older to a person not his or her spouse who is younger than sixteen (16) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact; or

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;

(C) By a caretaker to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;

(iii) Forcing or encouraging the watching of pornography;

(iv) Forcing, permitting, or encouraging the watching of live sexual activity;

(v) Forcing the listening to a phone sex line; or

(vi) An act of voyeurism; or

(D) By a person younger than ten (10) years of age to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(19)(A)(i) “Sexual contact” means any act of sexual gratification involving:

(a) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;

(b) The encouraging of a child to touch the offender in a sexual manner; or

(c) The offender requesting to touch a child in a sexual manner.

(ii) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

(B) However, nothing in this section shall permit normal affectionate hugging to be construed as sexual contact;

(20) “Sexual exploitation” means:

(A) Allowing, permitting, or encouraging participation or depiction of the child in:

(i) Prostitution;

(ii) Obscene photography;

(iii) Obscene filming; or

(B) Obscenely depicting, obscenely posing, or obscenely posturing a child for any use or purpose;

(21) “Subject of the report” means:

(A) The offender;

(B) The custodial and noncustodial parents, guardians, and legal custodians of the child who is subject to suspected maltreatment; and

(C) The child who is the subject of suspected maltreatment;

(22) “Underaged juvenile aggressor” means any child younger than ten (10) years of age for whom a report of sexual abuse has been determined to be true for sexual abuse to another child; and

(23) “Voyeurism” means looking, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude.

History. Acts 2009, No. 749, § 1.

12-18-104. Confidentiality.

Any data, records, reports, or documents that are created, collected, or compiled by or on behalf of the Department of Human Services, the Department of Arkansas State Police, or other entity authorized under this chapter to perform investigations or provide services to children, individuals, or families shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2009, No. 749, § 1.

12-18-105. Rules.

The Director of the Department of Human Services shall promulgate rules to implement this chapter.

History. Acts 2009, No. 749, § 1.

12-18-106. Cooperative agreements.

(a) The Director of the Department of Human Services shall implement a coordinated multidisciplinary team approach to intervention in reports involving severe maltreatment and all reports requested by a prosecuting attorney pertaining to a law enforcement or prosecuting attorney's investigation by initiating formal cooperative agreements with:

- (1) Law enforcement agencies;
- (2) Prosecuting attorneys; and
- (3) Other appropriate agencies and individuals.

(b) The director may enter into cooperative agreements with other states to create a national child maltreatment registration system.

History. Acts 2009, No. 749, § 1.

12-18-107. Liability.

(a) A person or agency required by this chapter to report suspected child maltreatment who acts in good faith in making notification, the taking of a photograph or radiological test, or the removal of a child while exercising a seventy-two-hour hold is immune to suit and to civil and criminal liability.

(b) If acting in good faith, a person making notification not named in this section is immune from liability.

(c) A publicly supported school, facility, or institution acting in good faith by cooperating with the investigative agency under this chapter shall be immune from civil and criminal liability.

History. Acts 2009, No. 749, § 1.

SUBCHAPTER 2 — OFFENSES AND PENALTIES**SECTION.**

- 12-18-201. Failure to notify by a mandated reporter in the first degree.
- 12-18-202. Failure to notify by a mandated reporter in the second degree.
- 12-18-203. Making a false report under this chapter.
- 12-18-204. Unlawful restriction of child abuse reporting.

SECTION.

- 12-18-205. Unlawful disclosure of data or information under this chapter.
- 12-18-206. Civil liability for failure to report.
- 12-18-207. Judicial and prosecutorial disclosure.
- 12-18-208. Subsequent disclosure by a subject of a report.
- 12-18-209. Imposition of penalties.

12-18-201. Failure to notify by a mandated reporter in the first degree.

(a) A person commits the offense of failure to notify by a mandated reporter in the first degree if he or she:

(1) Is a mandated reporter under this chapter;

(2) Has:

(A) Reasonable cause to suspect that a child has been subjected to child maltreatment;

(B) Reasonable cause to suspect that a child has died as a result of child maltreatment; or

(C) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment; and

(3) Knowingly fails to notify the Child Abuse Hotline of the child maltreatment or suspected child maltreatment.

(b) Failure to notify by a mandated reporter in the first degree is a Class A misdemeanor.

History. Acts 2009, No. 749, § 1.

12-18-202. Failure to notify by a mandated reporter in the second degree.

(a) A person commits the offense of failure to notify by a mandated reporter in the second degree if he or she:

(1) Is a mandated reporter under this chapter;

(2) Has:

(A) Reasonable cause to suspect that a child has been subjected to child maltreatment;

(B) Reasonable cause to suspect that a child has died as a result of child maltreatment; or

(C) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment; and

(3) Recklessly fails to notify the Child Abuse Hotline of the child maltreatment or suspected child maltreatment.

(b) Failure to notify by a mandated reporter in the second degree is a Class C misdemeanor.

History. Acts 2009, No. 749, § 1.

12-18-203. Making a false report under this chapter.

(a) A person commits the offense of making a false report under this chapter if he or she purposely makes a report containing a false allegation to the Child Abuse Hotline knowing the allegation to be false.

(b)(1) A first offense of making a false report under this chapter is a Class A misdemeanor.

(2) A subsequent offense of making a false report under this chapter is a Class D felony.

History. Acts 2009, No. 749, § 1.

12-18-204. Unlawful restriction of child abuse reporting.

(a)(1) A person employed at a school, Head Start program, or day care facility commits the offense of unlawful restriction of child abuse reporting if he or she:

(A) Prohibits a mandated reporter under this chapter from making a report of child maltreatment or suspected child maltreatment to the Child Abuse Hotline;

(B) Requires that a mandated reporter under this chapter receive permission from the person before the mandated reporter makes a report of child maltreatment or suspected child maltreatment to the Child Abuse Hotline; or

(C) Knowingly retaliates against a mandated reporter under this chapter for reporting child maltreatment or suspected child maltreatment to the Child Abuse Hotline.

(2) Nothing in this section shall prohibit any person or institution from requiring a mandatory reporter employed or serving as a volunteer for a person or institution to inform a representative of that person or institution that the reporter has made a report to the Child Abuse Hotline.

(b) Unlawful restriction of child abuse reporting is a Class A misdemeanor.

History. Acts 2009, No. 749, § 1.

12-18-205. Unlawful disclosure of data or information under this chapter.

(a) A person commits the offense of unlawful disclosure of data or information under this chapter if the person knowingly discloses data or information to a person to whom disclosure is not permitted by this chapter.

(b) Unlawful disclosure of data or information under this chapter is a Class A misdemeanor.

History. Acts 2009, No. 749, § 1.

12-18-206. Civil liability for failure to report.

A person required by this chapter to make a report of child maltreatment or suspected child maltreatment to the Child Abuse Hotline who purposely fails to do so is civilly liable for damages proximately caused by that failure.

History. Acts 2009, No. 749, § 1.

12-18-207. Judicial and prosecutorial disclosure.

A judge or prosecuting attorney who fails to make a report when required by this chapter is immune from criminal and civil liability under this chapter.

History. Acts 2009, No. 749, § 1.

12-18-208. Subsequent disclosure by a subject of a report.

This chapter does not prevent subsequent disclosure by a subject of the report.

History. Acts 2009, No. 749, § 1.

12-18-209. Imposition of penalties.

The Department of Human Services or a prosecuting attorney may file a petition in the appropriate court seeking imposition of penalties for violation of this chapter.

History. Acts 2009, No. 749, § 1.

SUBCHAPTER 3 — CHILD ABUSE HOTLINE

SECTION.

- 12-18-301. Creation.
- 12-18-302. Reports by mandated reporters.
- 12-18-303. Minimum requirements for a report to be accepted.
- 12-18-304. Qualifying reports of certain types of physical abuse.
- 12-18-305. Garrett's Law reports.
- 12-18-306. Reports naming an adult as the victim.

SECTION.

- 12-18-307. Reports alleging Munchausen syndrome by proxy or factitious illness.
- 12-18-308. Reports of injury to a child's intellectual, emotional, or psychological development.
- 12-18-309. Reports alleging that a child is dependent-neglected.

12-18-301. Creation.

(a) There is created the Child Abuse Hotline.

(b) The Child Abuse Hotline is a unit established within the Department of Human Services or its designee with the purpose of receiving and recording notifications and reports under this chapter.

(c)(1) The Child Abuse Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number.

(2) The toll-free telephone number under this section shall be known as the "Child Abuse Hotline".

(d) All persons whether a mandated reporter under this chapter or not may use the Child Abuse Hotline to report child maltreatment or suspected child maltreatment.

History. Acts 2009, No. 749, § 1.

12-18-302. Reports by mandated reporters.

(a) As prescribed under this section, a mandated reporter under this chapter may report child maltreatment or suspected child maltreatment by telephone call, facsimile transmission, or online reporting.

(b) Facsimile transmission and online reporting may be used in nonemergency situations by an identified mandated reporter under this chapter who provides the following contact information:

- (1) Name and phone number; and
- (2) In the case of online reporting, the email address of the identified mandated reporter under this chapter.

(c) The Child Abuse Hotline shall provide confirmation of the receipt of a facsimile transmission via a return facsimile transmission or via online receipt.

(d) A mandated reporter under this chapter who wishes to remain anonymous shall make a report through the Child Abuse Hotline toll-free telephone system.

History. Acts 2009, No. 749, § 1.

12-18-303. Minimum requirements for a report to be accepted.

(a) Except as otherwise provided in this section, the Child Abuse Hotline shall accept a report of child maltreatment or suspected child maltreatment if:

- (1) The allegations, if true, would constitute child maltreatment as defined under this chapter;
- (2) Sufficient identifying information is provided to identify and locate the child or the child's family; and
- (3) The child or the child's family is present in Arkansas or the incident occurred in Arkansas.

(b) If the alleged offender resides in another state and the incident occurred in another state or country, the Child Abuse Hotline shall screen out the report, transfer the report to the Child Abuse Hotline of the state or country where the alleged offender resides or the incident occurred, and, if child protection is an issue, forward the screened-out report to the Department of Human Services.

(c) If the incident occurred in Arkansas and the victim, offender, or victim's parents no longer reside in Arkansas, the Child Abuse Hotline shall accept the report and the Arkansas investigating agency shall contact the other state and request assistance in completing the investigation, including an interview with the out-of-state subject of the report.

(d)(1) If the Child Abuse Hotline receives a report and the alleged offender is a resident of the State of Arkansas and the report of child maltreatment or suspected child maltreatment in the state or country in which the act occurred would also be child maltreatment in Arkansas at the time the incident occurred, the Child Abuse Hotline shall refer

the report to the appropriate investigating agency within the state so that the Arkansas investigative agency can investigate alone or in concert with the investigative agency of any other state or country that may be involved.

(2) The Arkansas investigating agency shall make an investigative determination and shall provide notice to the alleged offender that, if the allegation is determined to be true, the offender's name will be placed in the Child Maltreatment Central Registry.

(3) The other state may also conduct an investigation in this state that results in the offender's being named in a true report in that state and placed in the Child Maltreatment Central Registry of that state.

History. Acts 2009, No. 749, § 1.

12-18-304. Qualifying reports of certain types of physical abuse.

(a)(1) The Child Abuse Hotline shall accept a report of physical abuse if any of the following intentional or knowing acts are alleged to occur:

- (A) Throwing, kicking, burning, biting, or cutting a child;
- (B) Striking a child with a closed fist;
- (C) Shaking a child four (4) years of age or older; or
- (D) Striking a child seven (7) years of age or older on the face or on the head.

(2) A report under this subsection shall not be determined to be true unless the child suffered an injury as the result of the act.

(b) The Child Abuse Hotline shall accept a report of physical abuse if any of the following intentional or knowing acts are alleged to occur:

- (1) Shaking a child three (3) years of age or younger;
- (2) Striking a child six (6) years of age or younger on the face or on the head;
- (3) Interfering with a child's breathing; or
- (4) Pinching, biting, or striking a child in the genital area.

(c)(1) The Child Abuse Hotline shall accept a report of physical abuse if a child suffers an injury as the result of a restraint.

(2) The report shall be determined not to be true if the injury is a minor temporary mark or causes transient pain and was an acceptable restraint as provided under this chapter.

(d)(1) The Child Abuse Hotline shall accept a report of physical abuse involving a bruise to a child even if at the time of the report the bruise is not visible if the bruising occurred:

- (A) Within the past fourteen (14) days; and
- (B) As a result of physical abuse as described under subsections (a)-(c) of this section.

(2) However, the report under this subsection shall not be determined to be true unless the existence of the bruise is corroborated.

History. Acts 2009, No. 749, § 1.

12-18-305. Garrett's Law reports.

The Child Abuse Hotline shall accept a report of neglect as defined under § 12-18-103(13)(B) only if the reporter is one (1) of the following mandated reporters and the mandated reporter has reasonable cause to suspect that a child has been subjected to neglect as defined under § 12-18-103(13)(B):

- (1) A licensed nurse;
- (2) Any medical personnel who may be engaged in the admission, examination, care, or treatment of persons;
- (3) An osteopath;
- (4) A physician;
- (5) A resident intern;
- (6) A surgeon; or
- (7) A social worker in a hospital.

History. Acts 2009, No. 749, § 1.

A.C.R.C. Notes. The catchline of this section is derived from Acts 2005, No. 1176, § 1: This act shall be known and may be cited as “Garrett’s Law: To Provide Services to a Newborn Child Born with an

Illegal Substance Present in the Child’s System”. Acts 2005, No. 1176, § 5, amended former § 12-12-507(f) to add provisions substantially similar to this section.

12-18-306. Reports naming an adult as the victim.

The Child Abuse Hotline shall accept a report of sexual abuse, sexual contact, or sexual exploitation naming an adult as the victim only if:

- (1) The alleged offender is a caretaker of a child; and
- (2) The person making the report is one (1) of the following:
 - (A) The adult victim;
 - (B) A law enforcement officer;
 - (C) The adult victim’s counselor or therapist;
 - (D) The alleged offender’s counselor or therapist; or
 - (E) The alleged offender.

History. Acts 2009, No. 749, § 1.

12-18-307. Reports alleging Munchausen syndrome by proxy or factitious illness.

The Child Abuse Hotline shall accept a report of child maltreatment alleging Munchausen syndrome by proxy or factitious illness only if the reporter is a medical professional.

History. Acts 2009, No. 749, § 1.

12-18-308. Reports of injury to a child’s intellectual, emotional, or psychological development.

The Child Abuse Hotline shall accept a report of injury to a child’s intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child’s ability to function

within the child's normal range of performance and behavior only if the reporter is:

- (1) A medical or mental health professional;
- (2) A teacher; or
- (3) A day care center worker.

History. Acts 2009, No. 749, § 1.

12-18-309. Reports alleging that a child is dependent-neglected.

The Child Abuse Hotline shall accept telephone calls or other communications alleging that a child is dependent-neglected, as defined in § 9-27-303(18), and shall immediately refer this information to the Department of Human Services.

History. Acts 2009, No. 749, § 1.

SUBCHAPTER 4 — REPORTING SUSPECTED CHILD MALTREATMENT

SECTION.

12-18-401. Generally.

12-18-402. Mandated reporters.

12-18-401. Generally.

A person may immediately notify the Child Abuse Hotline if he or she:

- (1) Has reasonable cause to suspect that:
 - (A) Child maltreatment has occurred; or
 - (B) A child has died as a result of child maltreatment; or
- (2) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.

History. Acts 2009, No. 749, § 1.

12-18-402. Mandated reporters.

(a) An individual listed as a mandated reporter under subsection (b) of this section shall immediately notify the Child Abuse Hotline if he or she:

- (1) Has reasonable cause to suspect that a child has:
 - (A) Been subjected to child maltreatment; or
 - (B) Died as a result of child maltreatment; or
- (2) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.

(b) The following individuals are mandated reporters under this chapter:

- (1) A child care worker or foster care worker;
- (2) A coroner;
- (3) A day care center worker;
- (4) A dentist;
- (5) A dental hygienist;

- (6) A domestic abuse advocate;
- (7) A domestic violence shelter employee;
- (8) A domestic violence shelter volunteer;
- (9) An employee of the Department of Human Services;
- (10) An employee working under contract for the Division of Youth Services of the Department of Human Services;
- (11) A foster parent;
- (12) A judge;
- (13) A law enforcement official;
- (14) A licensed nurse;
- (15) Medical personnel who may be engaged in the admission, examination, care, or treatment of persons;
- (16) A mental health professional;
- (17) An osteopath;
- (18) A peace officer;
- (19) A physician;
- (20) A prosecuting attorney;
- (21) A resident intern;
- (22) A school counselor;
- (23) A school official;
- (24) A social worker;
- (25) A surgeon;
- (26) A teacher;
- (27) A court-appointed special advocate program staff member or volunteer;
- (28) A juvenile intake or probation officer;
- (29) A clergy member, which includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him or her, except to the extent the clergy member:
 - (A) Has acquired knowledge of suspected child maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or
 - (B) Received the knowledge of the suspected child maltreatment from the alleged offender in the context of a statement of admission;
- (30) An employee of a child advocacy center or a child safety center;
- (31) An attorney ad litem in the course of his or her duties as an attorney ad litem;
- (32)(A) A sexual abuse advocate or sexual abuse volunteer who works with a victim of sexual abuse as an employee of a community-based victim service or mental health agency such as Safe Places, United Family Services, or Centers for Youth and Families.
- (B) A sexual abuse advocate or sexual abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;
- (33) A rape crisis advocate or rape crisis volunteer;
- (34)(A) A child abuse advocate or child abuse volunteer who works with a child victim of abuse or maltreatment as an employee of a

community-based victim service or a mental health agency such as Safe Places, United Family Services, or Centers for Youth and Families.

(B) A child abuse advocate or child abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;

(35) A victim/witness coordinator; or

(36) A victim assistance professional or victim assistance volunteer.

(c)(1) A privilege or contract shall not prevent a person from reporting child maltreatment when he or she is a mandated reporter and required to report under this section.

(2) A school, Head Start program, or day care facility shall not prohibit an employee or a volunteer from directly reporting child maltreatment to the Child Abuse Hotline.

(3) A school, Head Start program, or day care facility shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting child maltreatment to the Child Abuse Hotline.

History. Acts 2009, No. 749, § 1; 2009, No. 1409, § 1.

Amendments. The 2009 amendment by No. 1409 added (b)(32) through (b)(36).

SUBCHAPTER 5 — NOTICE PROCEDURES AFTER A REPORT OF SUSPECTED CHILD MALTREATMENT HAS BEEN MADE

SECTION.

12-18-501. Notice of a report to the Child Abuse Hotline.

12-18-502. Release and disclosure of data generally.

12-18-503. Notification generally.

12-18-504. Notification in cases of reports of severe maltreatment.

12-18-505. Notification to the child's school.

SECTION.

12-18-506. Notice when the alleged offender works with children or is engaged in child-related activities.

12-18-507. Notice when the alleged victim is a resident of a facility licensed, registered, or operated by the state.

12-18-501. Notice of a report to the Child Abuse Hotline.

Notice of a report to the Child Abuse Hotline is confidential and may be disclosed only as provided in this chapter.

History. Acts 2009, No. 749, § 1.

12-18-502. Release and disclosure of data generally.

(a)(1) The Department of Human Services shall not release data that would identify the person who made the report to the Child Abuse Hotline unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request the information shall be disclosed to the prosecuting attorney or law enforcement.

(b)(1) A person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her own attorney regarding the information in any notice provided by the department.

History. Acts 2009, No. 749, § 1.

12-18-503. Notification generally.

The Department of Human Services shall notify the following of any report of child maltreatment within five (5) business days:

(1) The legal parents, legal guardians, and current foster parent of a child in foster care who is named as a victim or alleged offender;

(2) The attorney ad litem for any child named as the victim or alleged offender;

(3) A person appointed by the court as the Court Appointed Special Advocate volunteer for any child named as the victim or alleged offender;

(4) Counsel in a dependency-neglect case or family in need of services case when the child is named as a victim or alleged offender;

(5) The attorney ad litem and Court Appointed Special Advocate volunteer for all other children in the same foster home if the child maltreatment occurred in a foster home;

(6) The attorney ad litem and Court Appointed Special Advocate for any child in foster care when the alleged juvenile offender or underaged juvenile aggressor is placed in the same placement as the attorney ad litem or Court Appointed Special Advocates' client; and

(7) The appropriate multidisciplinary team.

History. Acts 2009, No. 749, § 1.

12-18-504. Notification in cases of reports of severe maltreatment.

(a) The Department of Human Services shall immediately notify local law enforcement of all reports of severe maltreatment.

(b)(1) Notification of a report of child maltreatment shall be provided within five (5) business days to the prosecuting attorney on an allegation of severe maltreatment.

(2) The prosecuting attorney may provide written notice to the department that the department does not need to provide notification of the initial child maltreatment report to the prosecuting attorney's office.

(3) Upon receiving the notification, the department shall not be required to provide notification of the initial child maltreatment report to the prosecuting attorney's office.

History. Acts 2009, No. 749, § 1.

12-18-505. Notification to the child's school.

The Department of Human Services shall notify the child's school if the department takes a seventy-two-hour hold on the child or if the court awards the department custody of the child.

History. Acts 2009, No. 749, § 1.

12-18-506. Notice when the alleged offender works with children or is engaged in child-related activities.

(a) If the Child Abuse Hotline receives a report naming as an alleged offender a person who is engaged in child-related activities or employment and the Department of Human Services has determined that children under the care of the alleged offender appear to be at risk of maltreatment by the alleged offender, the department may notify the following of the report made to the Child Abuse Hotline:

- (1) The alleged offender's employer;
- (2) The school superintendent, principal, or a person in an equivalent position where the alleged offender is employed;
- (3) The person in charge of a paid or volunteer activity; and
- (4) The appropriate licensing or registering authority to the extent necessary to carry out its official responsibilities.

(b) The department shall promulgate rules that will ensure that notification required under this section is specifically approved by a responsible manager in the department before the notification is made.

(c) If the department, based on information gathered during the course of the investigation, determines that there is no preponderance of the evidence indicating that children under the care of the alleged offender appear to be at risk, the department shall immediately notify the previously notified person or entity of that information.

History. Acts 2009, No. 749, § 1.

12-18-507. Notice when the alleged victim is a resident of a facility licensed, registered, or operated by the state.

(a) If the Child Abuse Hotline receives a report that a client or a resident of a facility licensed or registered by the State of Arkansas has been subjected to child maltreatment while at the facility, the Department of Human Services shall immediately notify the facility director and the facility's licensing or registering authority of the Child Abuse Hotline's receipt of a report of suspected child maltreatment.

(b) If the Child Abuse Hotline receives a report that a client or a resident of a facility operated by the department or a facility operated under contract with the department has been subjected to child maltreatment while at the facility, the department shall immediately notify the appropriate division director and the facility director of the

Child Abuse Hotline’s receipt of initial report of suspected child maltreatment.

History. Acts 2009, No. 749, § 1.

SUBCHAPTER 6 — INVESTIGATIVE PROCEEDINGS

SECTION.	SECTION.
12-18-601. Assignment to investigative agency.	12-18-610. Access to the child’s school records.
12-18-602. Initiation of the investigation.	12-18-611. Inspection of personnel and volunteer records.
12-18-603. Accompaniment by law enforcement.	12-18-612. Criminal background check.
12-18-604. Services during the investigation.	12-18-613. Access to miscellaneous records.
12-18-605. Investigative interviews.	12-18-614. Submission to a physical exam or other testing.
12-18-606. When the alleged offender is a family member or lives in the home with the alleged victim.	12-18-615. Radiology procedures, photographs, videotapes, and medical records.
12-18-607. When the alleged offender is not a family member or not living in the home with the alleged victim.	12-18-616. Timing.
12-18-608. Interview of the alleged child victim.	12-18-617. Authority to pursue other remedies.
12-18-609. Right to enter for the purposes of the investigation.	12-18-618. Religious bias prohibited.
	12-18-619. Closing investigations.
	12-18-620. Release of information on pending investigation.

12-18-601. Assignment to investigative agency.

(a) When a person, agency, corporation, or partnership then providing substitute care for any child in the custody of the Department of Human Services or a Department of Human Services employee or employee’s spouse or other person residing in the home is reported as being suspected of child maltreatment, the investigation shall be conducted pursuant to procedures established by the Department of Human Services.

(b) The procedures described in subsection (a) of this section shall include referral of allegations to the Department of Arkansas State Police and any other appropriate law enforcement agency if the allegation involves severe maltreatment.

(c) Upon referral, the Department of Arkansas State Police shall investigate the allegations.

(d)(1) The Department of Human Services may develop and implement triage procedures for screening out reports of child maltreatment of a child not at risk of imminent harm if an appropriate referral is made to a community organization or voluntary preventive service.

(2) The Department of Human Services shall not implement this section until rules necessary to carry out this subsection have been promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 749, § 1.

12-18-602. Initiation of the investigation.

(a)(1) The Department of Human Services shall cause an investigation to be made upon receiving initial notification of suspected child maltreatment.

(b)(1) All investigations shall begin within seventy-two (72) hours.

(2) However, the investigation shall begin within twenty-four (24) hours if:

(A) The allegation is severe maltreatment, excluding an allegation of sexual abuse if the most recent allegation of sexual abuse was more than one (1) year ago and the alleged victim does not currently have contact with the alleged offender; or

(B) The allegation is that a child has been subjected to neglect as defined in § 12-18-103(13)(B).

(c) At the initial time of contact with the alleged offender, the person conducting the investigation shall advise the alleged offender of the allegations made against the alleged offender in a manner that is consistent with the laws protecting the rights of the person who made the report.

(d) Upon initiation of the investigation, the primary focus of the investigation shall be whether or not the alleged offender has access to children and whether or not children are at risk such that children need to be protected.

History. Acts 2009, No. 749, § 1.

12-18-603. Accompaniment by law enforcement.

Upon request, law enforcement shall accompany a person conducting an investigation required by this chapter.

History. Acts 2009, No. 749, § 1.

12-18-604. Services during the investigation.

The Department of Human Services shall have the authority to make referrals or provide services during the course of the child maltreatment investigation.

History. Acts 2009, No. 749, § 1.

12-18-605. Investigative interviews.

(a) An investigation of child maltreatment or suspected child maltreatment under this chapter shall include interviews with:

- (1) The child as provided under subsection (b) of this section;
- (2) The parents, both custodial and noncustodial;
- (3) If neither parent is the alleged offender, the alleged offender; and
- (4) Any other relevant persons.

(b) If, after exercising reasonable diligence in conducting any or all interviews, the subjects of the interviews cannot be located or are unable to communicate, the efforts to conduct the interviews shall be documented and the investigation shall proceed under this chapter.

History. Acts 2009, No. 749, § 1.

12-18-606. When the alleged offender is a family member or lives in the home with the alleged victim.

If the alleged offender is a family member or lives in the home with the alleged victim, an investigation under this chapter shall seek to ascertain:

- (1) The existence, cause, nature, and extent of the child maltreatment;
- (2) The existence and extent of previous injuries;
- (3) The identity of the person responsible for the child maltreatment;
- (4) The names and conditions of other children in the home;
- (5) The circumstances of the parents or caretakers of the child;
- (6) The environment where the child resides;
- (7) The relationship of the child or children with the parents or caretakers; and
- (8) All other pertinent data.

History. Acts 2009, No. 749, § 1.

12-18-607. When the alleged offender is not a family member or not living in the home with the alleged victim.

If the alleged offender is not a family member nor living in the home with the alleged victim, the investigation under this chapter shall seek to ascertain:

- (1) The existence, cause, nature, and extent of child maltreatment;
- (2) The identity of the person responsible for the child maltreatment;
- (3) The existence and extent of previous child maltreatment perpetrated by the alleged offender;
- (4) If the report is determined to be true, the names and conditions of any children of the alleged offender and whether these children have been maltreated or are at risk of child maltreatment;
- (5) If the report is determined to be true and is a report of sexual abuse, sexual contact, or sexual exploitation, an assessment of any other children previously or currently under the care of the alleged offender, to the extent practical, and whether these children have been maltreated or are at risk of maltreatment; and
- (6) All other pertinent and relevant data.

History. Acts 2009, No. 749, § 1.

12-18-608. Interview of the alleged child victim.

(a) A person conducting an investigation of a child victim under this chapter shall have the discretion:

(1) In the child's best interest, to limit the persons allowed to be present when a child is being interviewed concerning allegations of child maltreatment; and

(2) As it relates to the integrity of the investigation, to limit persons present during an interview.

(b)(1) The interview with the child victim shall be conducted separate and apart from the alleged offender or any representative or attorney for the alleged offender.

(2) However, if the age or abilities of the child victim render an interview impossible, the investigation shall include observation of the child.

History. Acts 2009, No. 749, § 1.

12-18-609. Right to enter for the purposes of the investigation.

(a) A person conducting an investigation under this chapter shall have the right to enter into or upon a home, school, or any other place for the purpose of conducting the investigation and interviewing or completing the investigation.

(b)(1) A publicly supported school, facility, or institution shall not deny access to any person conducting a child maltreatment investigation under this chapter.

(2) Failure to comply with this section may subject the publicly supported school, facility, or institution to a contempt sanction and reimbursement of attorney's fees.

(c)(1) If necessary access or admission is denied to a person conducting an investigation under this chapter, the Department of Human Services may petition the proper juvenile division of circuit court for an ex parte order of investigation requiring the parent, caretaker, or persons denying access to any place where the child may be to allow entrance for the interviews, examinations, and investigations.

(2) However, upon application to the court by the parents, caretaker, or persons denying access to the child showing good cause, the court may issue a written order to stay the order of investigation pending a hearing to be held within seventy-two (72) hours.

History. Acts 2009, No. 749, § 1.

12-18-610. Access to the child's school records.

A person conducting an investigation under this chapter shall be allowed access to the child's public and private school records during the course of the child maltreatment investigation.

History. Acts 2009, No. 749, § 1.

12-18-611. Inspection of personnel and volunteer records.

A person conducting an investigation required by this chapter shall have the right to inspect personnel records of employees and volunteers in any place where an allegation of child maltreatment has been reported as having occurred at that place but the alleged offender is unknown.

History. Acts 2009, No. 749, § 1.

12-18-612. Criminal background check.

(a) The person conducting an investigation under this chapter shall have the right to obtain a criminal background check, including a fingerprint-based check in any national crime information database, on any subject of the report.

(b) The results of the criminal background check shall not be disclosed outside of the Department of Human Services except as permitted under this chapter.

History. Acts 2009, No. 749, § 1.

12-18-613. Access to miscellaneous records.

Upon request by a person conducting an investigation under this chapter, a school, day care center, child care facility, residential facility, residential treatment facility, or similar institution shall provide the person conducting the investigation with:

(1) The name, date of birth, social security number, and last known address and phone number of any person identified as an alleged offender if the alleged child maltreatment occurred at that school, center, or facility; and

(2) The name and address of any witness to the alleged child maltreatment if the alleged child maltreatment occurred at that school, center, or facility.

History. Acts 2009, No. 749, § 1.

12-18-614. Submission to a physical exam or other testing.

An investigation under this chapter may include a physical examination, a drug test, radiology procedures, photographs, and a psychological or psychiatric examination of all children subject to the care, custody, or control of the alleged offender.

History. Acts 2009, No. 749, § 1.

12-18-615. Radiology procedures, photographs, videotapes, and medical records.

(a) A person who is required to make a report under this chapter may take or cause to be taken radiology procedures and photographs or

compile medical records that may be relevant as to the existence or extent of child maltreatment.

(b) A hospital or clinic may make videotapes that may be relevant as to the existence or extent of child maltreatment.

(c) The Department of Human Services or law enforcement officials shall be provided at no cost a copy of the results of radiology procedures, videotapes, photographs, or medical records upon request.

History. Acts 2009, No. 749, § 1.

12-18-616. Timing.

(a)(1) Except as otherwise provided in this section, an investigative determination shall be made in each investigation under this chapter within thirty (30) days regardless of whether the investigation is conducted by the Department of Human Services, the Crimes Against Children Division of the Department of Arkansas State Police, or local law enforcement.

(2) However, this procedural requirement shall not be considered as a factor to alter the investigative determination in any judicial or administrative proceeding.

(b) An investigation involving an out-of-home alleged offender that is determined to be true may be extended up to thirty (30) additional days to allow an investigator to ascertain:

(1) The names and conditions of any children of the alleged offender;

(2) Whether children of the alleged offender have been maltreated or are at risk of maltreatment; and

(3) To the extent practicable, whether children previously or currently under the care of the alleged offender have been sexually abused or are at risk of sexual abuse.

(c) An investigation shall not be transferred to inactive status because an investigator is awaiting documentary evidence.

History. Acts 2009, No. 749, § 1.

12-18-617. Authority to pursue other remedies.

(a) Notwithstanding an investigative determination finding of true but exempted, the Department of Human Services may pursue:

(1) Any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction; and

(2) Medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child or to prevent the withholding of medically indicated treatment from a child with life-threatening conditions.

(b) Except with respect to the withholding of medically indicated treatments from a disabled infant with life-threatening conditions, case-by-case determinations concerning the exercise of authority in this section shall be within the sole discretion of the department.

History. Acts 2009, No. 749, § 1.

12-18-618. Religious bias prohibited.

The Department of Human Services shall investigate all allegations of child maltreatment without regard to the parent's practice of his or her religious beliefs and shall only consider whether the acts or omissions of the parent constitute child maltreatment under this chapter.

History. Acts 2009, No. 749, § 1.

12-18-619. Closing investigations.

(a) If at any time before or during an investigation under this chapter it is determined that the alleged offender is not a caretaker of any child and the alleged victim has reached eighteen (18) years of age prior to notification, the child maltreatment investigation shall be closed notwithstanding any criminal investigation.

(b)(1) If at any time before or during the investigation it appears that the alleged offender is identified and is not a caretaker of the victim child, excluding investigations of sexual abuse, the Department of Human Services shall:

- (A) Refer the matter to the appropriate law enforcement agency;
- (B) Close its investigation; and

(C) Forward a copy of its findings to the appropriate law enforcement agency for the agency's further use in any criminal investigation.

(2)(A) If the appropriate law enforcement agency subsequently determines that the alleged offender is a caretaker, it shall immediately notify the department of its determination.

(B) Thereupon the department shall reopen and continue its investigation in compliance with all other requirements contained in this chapter.

(c) If at any time before or during the investigation the department is unable to locate or identify the alleged offender because the alleged child maltreatment occurred more than five (5) years ago or in another state, the department shall consider the report unable to be completed and place the report in inactive status.

History. Acts 2009, No. 749, § 1.

12-18-620. Release of information on pending investigation.

(a) Information on a pending investigation under this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify a person who made a report under this chapter unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and

has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d) The department may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

(e) Information on a pending investigation, including protected health information, shall be released upon request to:

- (1) The Department of Human Services;
- (2) Law enforcement;
- (3) The prosecuting attorney;
- (4) The appropriate multidisciplinary team;
- (5) Attorney ad litem of the alleged victim or offender;
- (6) Court Appointed Special Advocate of the alleged victim or offender;

(7) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(8) Any department division director or facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;

(9) Any facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter; and

(10)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body.

(f) Information on a pending investigation, including protected health information, may be released to or disclosed in a circuit court child custody case or similar case if:

(1) No seventy-two-hour hold has been exercised under this chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(2) Written notice of intent to request release or disclosure is provided to the investigating agency at least five (5) days before the date for release or disclosure;

(3) The investigating agency has the opportunity to appear before the court and be heard on the issue of release or disclosure;

(4) The information gathered by the investigative agency is necessary for the determination of an issue before the court;

- (5) Waiting until completion of the investigation will jeopardize the health or safety of the child in the custody case;
- (6) A protective order is issued to prevent redisclosure of the information provided by the investigating agency or the information is released or disclosed only to the court in camera; and
- (7) Release or disclosure of the information will not compromise a criminal investigation.
- (g) Information on a pending investigation, including protected health information, may be released to or disclosed in the circuit court if the victim or alleged offender has an open dependency-neglect or family in need of services case before the circuit court.

History. Acts 2009, No. 749, § 1.

SUBCHAPTER 7 — INVESTIGATIVE FINDINGS

SECTION.	SECTION.
12-18-701. Generally.	or is engaged in child-related activities.
12-18-702. Investigative determination.	
12-18-703. Notice generally.	12-18-708. Miscellaneous notice requirements.
12-18-704. Notice if the alleged offender is under ten years of age.	12-18-709. Confidentiality.
12-18-705. Notice if the alleged offender is ten years of age or older.	12-18-710. Release of information on true investigative determination pending due process.
12-18-706. Notice if the alleged offender is eighteen years of age or older.	12-18-711. Fee for copying investigative file.
12-18-707. Notice when the alleged offender works with children	

12-18-701. Generally.

- (a) The agency responsible for an investigation under this chapter shall make a complete written report of the investigation by the conclusion of a period of thirty (30) days.
- (b) The report of the investigation shall include the following information:
- (1) The names and addresses of the child and his or her legal parents and other caretakers of the child, if known;
 - (2) The child’s age, sex, and race;
 - (3) The nature and extent of the child’s present and past injuries;
 - (4) The investigative determination;
 - (5) The nature and extent of the child maltreatment, including any evidence of previous injuries or child maltreatment to the child or his or her siblings;
 - (6) The name and address of the person responsible for the injuries or child maltreatment if known;
 - (7) Services offered and accepted;
 - (8) Family composition;
 - (9) The source of the notification; and

(10) The person making the notification, his or her occupation, and where he or she can be reached.

(c) The agency responsible for the investigation shall immediately provide the Department of Human Services at no cost a copy of the written report and any information gathered during the course of the investigation, including statements from witnesses and transcripts of interviews.

(d) All information gathered during the course of the investigation shall be contained in the file of the department whether or not the information supports the investigative determination.

(e)(1) The department shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, the information shall be disclosed to the prosecuting attorney or law enforcement officers on request.

(f) The report, exclusive of information identifying the person making the notification, shall be admissible in evidence in any proceeding related to child maltreatment.

(g) Notwithstanding any provision of the Arkansas Rules of Evidence, any privilege between a minister and any person confessing to or being counseled by the minister shall not constitute grounds for excluding evidence at any dependency-neglect proceeding or proceedings involving custody of a child.

History. Acts 2009, No. 749, § 1.

12-18-702. Investigative determination.

Upon completion of an investigation under this chapter, the Department of Human Services shall determine whether the allegations of child maltreatment are:

(1)(A) Unsubstantiated.

(B) An unsubstantiated determination shall be entered when the allegation is not supported by a preponderance of the evidence;

(2)(A) True.

(B) A true determination shall be entered when the allegation is supported by a preponderance of the evidence.

(C) A determination of true but exempted, which means that the offender's name shall not be placed in the Child Maltreatment Central Registry, shall be entered if:

(i) A parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child, but in lieu of treatment the child is being furnished with treatment by spiritual means alone, through prayer, in accordance with a recognized religious method of healing by an accredited practitioner;

(ii) The offender is an underaged juvenile aggressor; or

(iii) The report was true for neglect as defined under § 12-18-103(13)(B); or

(3)(A) Inactive.

(B) If the investigation cannot be completed, the investigation shall be determined incomplete and placed in inactive status.

History. Acts 2009, No. 749, § 1.

12-18-703. Notice generally.

(a) The Department of Human Services shall notify each alleged offender of the child maltreatment investigative determination whether true or unsubstantiated.

(b) In every case in which a report is determined to be true, the department shall notify the alleged offender of the investigative determination by certified mail, restricted delivery, or process server.

History. Acts 2009, No. 749, § 1.

12-18-704. Notice if the alleged offender is under ten years of age.

If the report was determined true and the alleged offender is a child under ten (10) years of age at the time the act or omission occurred, the Department of Human Services shall notify the legal parents and legal guardians of the investigative determination and that the child's name shall not be placed in the Child Maltreatment Central Registry.

History. Acts 2009, No. 749, § 1.

12-18-705. Notice if the alleged offender is ten years of age or older.

(a) If the report was determined true and the alleged offender is a child ten (10) years of age or older at the time the act or omission occurred a notice shall be given as provided in this section.

(b) The notice under this section shall be provided as follows:

(1) If the child is in foster care, the Department of Human Services shall notify the child's counsel and the legal parents, legal guardians, and current foster parents of the alleged offender; or

(2) If the child is not in foster care, the department shall notify the legal parents and legal guardians of the alleged offender.

(c) The notice under this section shall include the following:

(1) The investigative determination, excluding data that would identify the person who made the report to the Child Abuse Hotline;

(2) A statement that the matter has been referred for an automatic administrative hearing that may only be waived by the alleged juvenile offender or his or her parent or legal guardian in writing;

(3) The potential consequences to the alleged juvenile offender if the juvenile offender's name is placed in the Child Maltreatment Central Registry;

(4) A statement that the person has a right to have an attorney and if the person cannot afford an attorney to contact Legal Services;

(5) A statement that if the person's name is placed on the registry, the person's name may be automatically removed after one (1) year or the person may be able to petition for removal after one (1) year, depending on the finding;

(6) A statement that the administrative hearing may take place in person if requested by the alleged juvenile offender, the alleged juvenile offender's parent or guardian, or the alleged offender's attorney within thirty (30) days from the date that the alleged juvenile offender receives notification under this section; and

(7) The name of the person making the notification to the alleged juvenile offender, his or her title or position, and current contact information.

History. Acts 2009, No. 749, § 1.

12-18-706. Notice if the alleged offender is eighteen years of age or older.

Notification to an alleged offender who was eighteen (18) years of age or older at the time of the act or omission that resulted in a true finding of child maltreatment shall include the following:

(1) The investigative determination, excluding data that would identify the person who made the report to the Child Abuse Hotline;

(2) A statement that the person named as the alleged offender of the true report may request an administrative hearing;

(3) A statement that the request must be made to the Department of Human Services within thirty (30) days of receipt of the service or certified mailing of the notice of determination;

(4) The potential consequences to the person if the person's name is placed on the Child Maltreatment Central Registry;

(5) A statement that the person has a right to have an attorney and that if the person cannot afford an attorney to contact Legal Services;

(6) A statement that if the person's name is placed on the registry, the person's name may be automatically removed after one (1) year or the person may be able to petition for removal after one (1) year, depending on the finding;

(7) The name of the person making the notification to the alleged juvenile offender, his or her title or position, and current contact information; and

(8) A statement that the administrative hearing may take place in person if requested by the alleged offender or the alleged offender's attorney within thirty (30) days from the date that the alleged offender receives notification under this section.

History. Acts 2009, No. 749, § 1.

12-18-707. Notice when the alleged offender works with children or is engaged in child-related activities.

(a) If the child maltreatment investigative determination names as an alleged offender a person who is engaged in child-related activities or employment and the Department of Human Services has determined that children under the care of the alleged offender appear to be at risk of maltreatment by the alleged offender, the department may notify the following of the investigative determination:

- (1) An alleged offender's employer;
- (2) A school superintendent, principal, or a person in an equivalent position where the alleged offender is employed;
- (3) A person in charge of a paid or volunteer activity; and
- (4) Any licensing or registering authority to the extent necessary to carry out its official responsibilities.

(b) The department shall promulgate rules that will ensure that notification required under this section is specifically approved by a responsible manager in the department before the notification is made.

(c) If the department later determines that there is no preponderance of the evidence indicating that children under the care of the alleged offender appear to be at risk, the department shall immediately notify the previously notified person or entity of that information.

History. Acts 2009, No. 749, § 1.

12-18-708. Miscellaneous notice requirements.

(a) Notification of an investigative determination under this chapter shall be provided to:

- (1) The appropriate multidisciplinary team;
- (2) The circuit court judge if the victim or offender has an open dependency-neglect or family in need of services case;
- (3) The attorney ad litem for any child who is named as the victim or offender;
- (4) The Court Appointed Special Advocate for any child named as the alleged victim or offender;
- (5) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;
- (6) Any department division director or facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;
- (7) Any facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;
- (8) The legal parents, legal guardians, and current foster parents of any child in foster care named as an alleged victim; and
- (9) The attorney ad litem and Court Appointed Special Advocate volunteer of all other children in the same foster home if the child maltreatment occurred in a foster home.

(b) If the investigative determination is unsubstantiated, the Department of Human Services shall notify the mandated reporter who made the underlying report.

(c) If the investigative determination is true, notification of the investigative determination shall be provided to the school where the victim child is enrolled. However, the name of the alleged offender shall not be identified.

History. Acts 2009, No. 749, § 1.

12-18-709. Confidentiality.

(a) Notice of an investigative determination under this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed, in camera, the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d)(1) Notification of the investigative determination of severe maltreatment shall be provided to the appropriate law enforcement agency and the prosecuting attorney.

(2) The prosecuting attorney and law enforcement may provide written notice to the department that the department does not need to provide notice of investigative determinations.

(3) Upon receiving the notification, the department shall not be required to provide notification of the investigative determination.

(e) The department shall notify each subject of the report of the investigative determination whether true or unsubstantiated.

History. Acts 2009, No. 749, § 1.

12-18-710. Release of information on true investigative determination pending due process.

(a) Information on a completed true investigation pending due process as referenced in this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d) The department may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

(e) Information on a completed investigation, including protected health information, pending due process shall be released upon request to:

- (1) The alleged offender;
- (2) The department;
- (3) Law enforcement;
- (4) The prosecuting attorney;
- (5) The appropriate multidisciplinary team;
- (6) Attorney ad litem for the victim or offender;
- (7) Court Appointed Special Advocate for the victim or offender;
- (8) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;
- (9) Any department division director or facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;
- (10) Any facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter; and
- (11)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body.

(f) Information on a true investigative determination, including protected health information, may be released to or disclosed in a circuit court child custody case or similar case if:

(1) No seventy-two-hour hold has been exercised under this chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(2) Written notice of intent to request release or disclosure is provided to the investigating agency at least five (5) days before the date for release or disclosure;

(3) The investigating agency has the opportunity to appear before the court and be heard on the issue of release or disclosure;

(4) The information gathered by the investigative agency is necessary for the determination of an issue before the court;

(5) Waiting until completion of due process will jeopardize the health or safety of the child in the custody case;

(6) A protective order is issued to prevent redisclosure of the information provided by the investigating agency or the information is released or disclosed only to the court in camera; and

(7) Release or disclosure of the information will not compromise a criminal investigation.

(g) Information on a true investigative determination, including protected health information, may be released to or disclosed in the circuit court if the victim or offender has an open dependency-neglect or family in need of services case before the circuit court.

History. Acts 2009, No. 749, § 1.

12-18-711. Fee for copying investigative file.

(a) Except as provided under subsection (b) of this section, the Department of Human Services may charge:

(1) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, and mailing records of an investigative file under this chapter; and

(2) A reasonable fee for reproducing copies of tapes and photographs.

(b) A fee shall not be charged to:

(1) A nonprofit or volunteer agency that requests searches of the investigative files; or

(2) A person who is indigent.

History. Acts 2009, No. 749, § 1.

SUBCHAPTER 8 — ADMINISTRATIVE HEARINGS

SECTION.

12-18-801. Time to complete administrative hearing.

12-18-802. Subpoenas — Form.

12-18-803. Privileged communications as evidence — Exception.

12-18-804. Defenses and affirmative defenses.

12-18-805. Video teleconferencing and teleconferencing options.

12-18-806. Continuances.

12-18-807. Administrative judgments and adjudications.

12-18-808. Notice of juvenile division circuit court proceedings.

SECTION.

12-18-809. Confidentiality.

12-18-810. Authority to amend investigative determinations based on evidence.

12-18-811. Expedited administrative hearings.

12-18-812. Preliminary administrative hearing.

12-18-813. Notice of investigative determination upon satisfaction of due process.

12-18-801. Time to complete administrative hearing.

(a)(1)(A) The administrative hearing process under this chapter must be completed within one hundred eighty (180) days from the date of the receipt of the request for a hearing, or the administrative law judge shall enter an order overturning the investigative agency's investigative determination of true.

(B) However, delays in completing the administrative hearing that are attributable to the petitioner shall not count against the limit of one hundred eighty (180) days.

(2)(A) If an order is entered overturning the investigating agency's investigative determination of true because of the failure to complete the administrative hearing process within one hundred eighty (180) days, the Department of Human Services shall report any failures to comply with this subsection for each quarter to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(B) The quarterly report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth shall include a written explanation of the failure of the department.

(b)(1) The limit of one hundred eighty (180) days for an administrative hearing under this chapter shall not apply if there is an ongoing criminal or delinquency investigation or criminal or delinquency charges have been filed or will be filed regarding the occurrence that is the subject of the child maltreatment report.

(2) In a case described under subdivision (b)(1) of this section, the administrative hearing shall be stayed pending final disposition of the criminal or delinquency proceedings.

(3) It shall be the duty of the petitioner to report the final disposition of the criminal or delinquency proceeding to the department.

(4) Each report shall include a file-marked copy of the criminal or delinquency disposition.

(5) The request for an administrative hearing shall be deemed waived if the petitioner fails to report the disposition of the criminal or delinquency proceedings within thirty (30) days of the entry of a dispositive judgment or order.

(6) If the criminal or delinquency proceedings have not reached a final outcome within twelve (12) months of the filing of the request for administrative hearing, the administrative appeal will be deemed waived if the petitioner fails to provide a written statement of the status of the criminal or delinquency proceedings every sixty (60) days and a disposition report within thirty (30) days of the entry of a dispositive judgment or order.

History. Acts 2009, No. 749, § 1.

12-18-802. Subpoenas — Form.

(a) When the Department of Human Services conducts an administrative hearing, the chief counsel of the department may require the attendance of witnesses and the production of books, records, or other documents through the issuance of subpoenas when that testimony or information is necessary to adequately present the position of the department, the investigating agency, or the alleged offender.

(b) Failure to obey the subpoena may be deemed contempt, punishable accordingly.

(c) Requests for subpoenas shall be granted by the chief counsel of the department or a designee if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.

(d) Subpoenas issued pursuant to the authority of the chief counsel of the department shall be substantially in the following form:

"The State of Arkansas to the Sheriff of _____ County: You are commanded to subpoena (name) _____, (address) _____, to attend a proceeding before the Department of Human Services to be held at _____ on the day of ____, 20____, at ____m., and testify and/or produce the following books, records, or other documents, to wit: in a matter of (style of proceeding) _____ to be conducted under the authority of _____. WITNESS my hand this _____ day of ____, 20____.

Chief Counsel or designee, Department of Human Services".

(e)(1) Subpoenas issued under this section shall be served in the manner as now provided by law, returned, and a copy made and kept by the department.

(2) The fees and mileage for officers serving the subpoenas and witnesses answering the subpoenas shall be the same as now provided by law.

(f) Witnesses duly served with subpoenas issued pursuant to the authority provided in this section who refuse to testify or give evidence may be cited on affidavit through application of the chief counsel of the department to the Pulaski County Circuit Court or any circuit court of the state where the subpoenas were served.

(g) If any child served with a subpoena to be a witness in an administrative hearing is a party to an open dependency-neglect or family in need of services case, the child's attorney ad litem shall be provided a copy of the subpoena.

History. Acts 2009, No. 749, § 1.

12-18-803. Privileged communications as evidence — Exception.

(a) It is the public policy of the State of Arkansas to protect the health, safety, and the welfare of children within the state.

(b) No privilege, except that between a lawyer and client or between a minister, including a Christian Science practitioner, and a person

confessing to or being counseled by the minister shall prevent anyone from testifying concerning child maltreatment.

(c) When a physician, psychologist, psychiatrist, or licensed counselor or therapist conducts interviews with or provides therapy to a subject of a report of suspected child maltreatment for purposes related to child maltreatment, the physician, psychologist, psychiatrist, or licensed counselor or therapist is deemed to be performing services on behalf of the child.

(d) An adult subject of a report of suspected child maltreatment cannot invoke privilege on the child's behalf.

History. Acts 2009, No. 749, § 1.

12-18-804. Defenses and affirmative defenses.

For any act or omission of child maltreatment that would be a criminal offense or an act of delinquency, any defense or affirmative defense that would be applicable to the criminal offense or delinquent act is also cognizable in a child maltreatment proceeding.

History. Acts 2009, No. 749, § 1.

12-18-805. Video teleconferencing and teleconferencing options.

(a)(1) An administrative law judge may conduct an administrative hearing under this chapter by video teleconference in lieu of an in-person hearing.

(2) If neither party requests that the administrative hearing be conducted in person, the administrative hearing shall be conducted telephonically.

(b) If any party requests an in-person administrative hearing within thirty (30) days from the date that the party receives notification, the in-person administrative hearing shall be conducted in an office of the Department of Human Services nearest to the petitioner's residence unless the administrative law judge notifies the parties that the administrative hearing will be conducted via video teleconference.

(c)(1) The Office of Appeals and Hearings of the Department of Human Services shall designate the sites to be used for video teleconference administrative hearings.

(2) The office shall designate sites within ten (10) miles of the following cities:

- (A) Arkadelphia;
- (B) Booneville;
- (C) Conway;
- (D) Fayetteville;
- (E) Jonesboro;
- (F) Little Rock; and
- (G) Warren.

(3) The office may designate additional sites for video teleconference administrative hearings.

(4) A site for a video teleconference administrative hearing shall include the location designated by the office that is nearest to the petitioner's residence.

(5) The administrative law judge and other parties may agree to appear at the location designated by the office or at any other designated administrative hearing locations that are convenient to them.

History. Acts 2009, No. 749, § 1.

12-18-806. Continuances.

(a)(1) An administrative law judge shall grant a continuance if the record under this chapter tendered by the Department of Human Services to the alleged offender is determined by the administrative law judge to be incomplete.

(2) The administrative law judge shall direct the department to make diligent inquiry and obtain the missing information to supplement the record if:

(A) The department receives further information;

(B) The alleged offender gives notice of the existence of further information; or

(C) The department examines the record and determines that additional information exists.

(3) If additional information is found to exist, the record shall be supplemented and the department shall provide a copy of the supplemented record to the alleged offender.

(b) At least ten (10) days prior to the administrative hearing, the alleged offender and the department shall share any information with the other party that the party intends to introduce into evidence at the administrative hearing that is not contained in the record.

(c) If a party fails to timely share information, the administrative law judge shall:

(1) Grant a continuance;

(2) Allow the record to remain open for submission of rebuttal evidence; or

(3) Reject the information as not relevant to the incident of child maltreatment.

(d) Any time accrued during the continuance or allowing the record to remain open shall not be counted in the one-hundred-eighty-day time period to complete the administrative hearing.

History. Acts 2009, No. 749, § 1.

12-18-807. Administrative judgments and adjudications.

(a) A certified copy of a judgment or an adjudication from a court of competent jurisdiction dealing with the same subject matter as an issue concerned in an administrative hearing under this chapter shall be filed

with the Office of Appeals and Hearings of the Department of Human Services.

(b)(1) A decision on any identical issue shall be rendered without an administrative hearing and shall be consistent with the judgment or adjudication.

(2) However, if the judgment or adjudication of the court is reversed or vacated and notice of the reversal or vacation is provided to the department, the department shall set the matter for an administrative hearing.

History. Acts 2009, No. 749, § 1.

12-18-808. Notice of juvenile division circuit court proceedings.

(a) The Department of Human Services shall notify the administrative law judge and the petitioner of the status of any juvenile division of circuit court proceeding involving the victim if child maltreatment at issue in the administrative hearing proceeding is also an issue in the juvenile division of circuit court proceeding.

(b) Notice from the department under this section shall also include whether the department exercised a seventy-two-hour hold on the victim and released the child or if the department or division of circuit court dismissed a petition for emergency custody or dependency-neglect.

History. Acts 2009, No. 749, § 1.

12-18-809. Confidentiality.

(a) An administrative hearing decision under this chapter and all exhibits submitted at the hearing are confidential and shall remain confidential upon the filing of an appeal with a circuit court or an appellate court.

(b) An administrative hearing decision under this chapter that upholds the agency investigative determination of true may be used or disclosed only as provided in this chapter.

(c) An administrative hearing decision under this chapter that overturns the agency investigative determination of true may be used or disclosed only as provided in this chapter.

History. Acts 2009, No. 749, § 1.

12-18-810. Authority to amend investigative determinations based on evidence.

(a) An administrative law judge may amend an investigative determination to conform with the evidence presented.

(b)(1) If the alleged offender could not reasonably infer the amended investigative determination from the investigative record and information submitted by the Department of Human Services, the administra-

tive law judge shall, upon request, grant a continuance to the alleged offender.

(2) However, an amendment of the investigative determination shall not be done after the conclusion of the hearing.

History. Acts 2009, No. 749, § 1.

12-18-811. Expedited administrative hearings.

(a)(1) If an alleged offender timely requests an administrative hearing, the Department of Human Services may request that the administrative hearing be expedited if the alleged offender is engaged in child-related activities or employment or the alleged offender is employed or a volunteer with persons with disabilities, persons with mental illnesses, or elderly persons.

(2) The alleged offender shall have five (5) days from date of receipt of the request for an expedited administrative hearing to object to any request to expedite the administrative hearing.

(b) The expedited administrative hearing shall be granted if any of the following are at risk because of the alleged offender's employment or volunteer activities:

- (1) Children;
- (2) The elderly; or
- (3) Persons with disabilities or mental illnesses.

(c) If the administrative hearing is expedited, the department shall immediately make the investigative file available to the alleged offender.

(d)(1) The department may charge:

(A) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, and mailing records of the investigative file; and

(B) A reasonable fee for reproducing copies of tapes and photographs.

(2) A fee shall not be charged to a person who is indigent.

(e)(1) Unless waived by the alleged offender, the expedited administrative hearing process shall not be held until at least thirty (30) days have elapsed after the investigative file is made available to the alleged offender.

(2) As used in this section, "made available" means notification to the offender or his or her attorney that a copy of the investigative record is available for pickup at the department office in the county in which the alleged offender resides or in the department office in the county designated by the alleged offender or his or her attorney.

History. Acts 2009, No. 749, § 1.

12-18-812. Preliminary administrative hearing.

(a) If the Department of Human Services is unable to notify an offender of an investigative determination under this chapter, the department may request a preliminary administrative hearing to allow

provisional placement of the offender's name in the Child Maltreatment Central Registry.

(b) The department must prove that the department diligently attempted to notify the alleged offender of the investigative determination, specifically, that the department used a reasonable degree of care to ascertain the offender's whereabouts and notify the offender.

(c) The department shall notify the administrative law judge of any criminal action related to the investigation.

(d) At the preliminary administrative hearing, the administrative law judge shall determine whether a prima facie case exists that:

(1) The offender committed child maltreatment, that is, whether a preponderance of the evidence supports a finding that the allegations are true; and

(2) A child, elderly person, person with a disability, or person with mental illness may be at risk of harm.

(e) If the administrative law judge determines there is not a prima facie case, the department shall not at that time place the alleged offender's name in the registry but may continue to provide notice to the alleged offender for a regular administrative hearing.

(f) If the administrative law judge determines there is a prima facie case, the administrative law judge shall direct that the offender's name shall be provisionally placed in the registry.

(g)(1) If an offender's name is provisionally placed in the registry the alleged offender may request a regular administrative hearing within thirty (30) days of receipt of the notice of the investigative determination.

(2) Failure to timely request a regular administrative hearing shall result in a finding by the administrative law judge that the provisional designation shall be removed and the offender's name shall be officially placed in the registry.

History. Acts 2009, No. 749, § 1.

12-18-813. Notice of investigative determination upon satisfaction of due process.

(a)(1) Due process has been satisfied when:

(A) The alleged offender eighteen (18) years of age or older at the time the act or omission occurred was provided written notice of the true investigative determination as required by this chapter but failed to timely request an administrative hearing;

(B) The alleged offender eighteen (18) years of age or older at the time the act or omission occurred timely requested an administrative hearing and a decision has been issued by the administrative law judge; or

(C) The alleged offender was a child at the time the act or omission occurred and the child or his or her legal parent or legal guardian waived the administrative hearing or the administrative law judge issued a decision.

(2) Upon satisfaction of due process, if the investigative determination is true, the alleged offender's name shall be placed in the Child Maltreatment Central Registry.

(b) If the person or agency making the initial notification of suspected child maltreatment is a mandated reporter, the Department of Human Services shall provide to the mandated reporter the following information:

(1) The investigative determination; and

(2) Services offered and provided.

(c)(1) Upon satisfaction of due process and if the investigative determination is true, the department shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report including the name and relationship of the offender to the maltreated child and the services offered or provided by the department to the child.

(2) Upon completion of due process, the department shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report indicating the department's true investigative determination on any child ten (10) years of age or older who is named as the offender in a true report and the services offered or provided by the department to the juvenile offender.

(3) Any local educational agency receiving information under this section from the department shall make this information, if it is a true report, confidential and a part of the child's permanent educational record and shall treat information under this section as educational records are treated under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(d)(1) Upon satisfaction of due process and if the investigative determination is true, if the offender is engaged in child-related activities or employment and the department has determined that children under the care of the offender appear to be at risk of maltreatment by the offender, the department may notify the following of the investigative determination:

(A) The offender's employer;

(B) A school superintendent, principal, or a person in an equivalent position where the offender is employed;

(C) A person in charge of a paid or volunteer activity; and

(D) Any licensing or registering authority to the extent necessary to carry out its official responsibilities.

(2) The department shall promulgate rules that shall ensure that notification required under this subsection is specifically approved by a responsible manager in the department before the notification is made.

(3) If the department later determines that there is not a preponderance of the evidence indicating that children under the care of the alleged offender appear to be at risk, the department shall immediately notify the previously notified person or entity of that information.

(e) Upon satisfaction of due process, if the victim or offender is in foster care, notification of the investigative determination shall be provided to:

- (1) The legal parents, legal guardians, and current foster parents of the victim; and
- (2) The attorney ad litem and Court Appointed Special Advocate volunteer of any other children in the same foster home if the maltreatment occurred in the foster home.
- (f) Upon satisfaction of due process, notification of the investigative determination shall be provided to the following:
 - (1) All subjects of the report;
 - (2) The juvenile division of circuit court if the child has an open dependency-neglect or family in need of services case and the child was named as a victim or offender;
 - (3) The attorney ad litem;
 - (4) Any person appointed by the court as the Court Appointed Special Advocate volunteer;
 - (5) The appropriate multidisciplinary team;
 - (6) A child safety center if involved in the investigation;
 - (7) Law enforcement;
 - (8) The prosecuting attorney in cases of severe maltreatment;
 - (9) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;
 - (10) Any department division director or facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;
 - (11) Any facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter; and
 - (12) As required by § 21-15-110, the employer of any offender if the offender is in a designated position with a state agency.

History. Acts 2009, No. 749, § 1.

SUBCHAPTER 9 — CHILD MALTREATMENT CENTRAL REGISTRY

SECTION.

- 12-18-901. Creation.
- 12-18-902. Contents.
- 12-18-903. Placement in the Child Maltreatment Central Registry.
- 12-18-904. Child Maltreatment Central Registry generally.
- 12-18-905. Provisional placement in the Child Maltreatment Central Registry.
- 12-18-906. Allegations determined to be unsubstantiated not to be included.

SECTION.

- 12-18-907. Rules.
- 12-18-908. Removal of name from the Child Maltreatment Central Registry.
- 12-18-909. Availability of true reports of child maltreatment from the central registry.
- 12-18-910. Availability of screened-out and unsubstantiated reports.

12-18-901. Creation.

There is established within the Department of Human Services a statewide Child Maltreatment Central Registry.

History. Acts 2009, No. 749, § 1.

12-18-902. Contents.

The Child Maltreatment Central Registry shall contain records of cases on all true investigative determinations of child maltreatment.

History. Acts 2009, No. 749, § 1.

12-18-903. Placement in the Child Maltreatment Central Registry.

An offender's name shall be placed in the Child Maltreatment Central Registry if:

(1) After notice, the offender eighteen (18) years of age or older at the time the act or omission occurred does not timely request an administrative hearing;

(2) The alleged offender was a child at the time of the act or omission and the child or his or her legal parent or legal guardian waived the administrative hearing;

(3) The administrative law judge upheld the investigative determination of true pursuant to a preliminary administrative hearing; or

(4) Upon completion of the administrative hearing process, the department's investigative determination of true is upheld.

History. Acts 2009, No. 749, § 1.

12-18-904. Child Maltreatment Central Registry generally.

An offender's name shall remain in the Child Maltreatment Central Registry unless:

(1) The name is removed pursuant to this chapter or another statute;

(2) The name is removed under a rule;

(3) The name was provisionally placed in the registry and the alleged offender subsequently prevails at an administrative hearing; or

(4) The offender prevails upon appeal.

History. Acts 2009, No. 749, § 1.

12-18-905. Provisional placement in the Child Maltreatment Central Registry.

If an alleged offender's name is provisionally placed in the Child Maltreatment Central Registry, any disclosure by the registry shall include the notation that the name has only been provisionally placed in the registry.

History. Acts 2009, No. 749, § 1.

12-18-906. Allegations determined to be unsubstantiated not to be included.

Records of all cases in which allegations are determined to be unsubstantiated shall not be included in the Child Maltreatment Central Registry.

History. Acts 2009, No. 749, § 1.

12-18-907. Rules.

The Department of Human Services may adopt rules as may be necessary to encourage cooperation with other states in exchanging true reports and to effect a national registration system.

History. Acts 2009, No. 749, § 1.

12-18-908. Removal of name from the Child Maltreatment Central Registry.

(a) If an adult offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offense from the offender's criminal record, the offender shall always remain in the registry unless the conviction is reversed or vacated.

(b)(1) The Department of Human Services shall identify in its policy and procedures manual the types of child maltreatment that shall automatically result in the removal of the name of an offender from the registry.

(2) If an offender has been entered into the registry as an offender for the named types of child maltreatment identified under subdivision (b)(1) of this section, the offender's name shall be removed from the registry on reports of this type of child maltreatment if the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has passed since the offender's name was placed on the registry.

(c)(1) The department shall identify in its policy and procedures manual the types of child maltreatment for which an offender can request that the offender's name be removed from the registry.

(2)(A) If an offender has been entered into the registry as an offender for the named types of child maltreatment identified under subdivision (c)(1) of this section, the offender may petition the department, requesting that the offender's name be removed from the registry if the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has passed since the offender's name was placed on the registry.

(B) If the department denies the request for removal of the name from the registry, the offender shall wait one (1) year from the date of the request for removal before filing a new petition with the depart-

ment, requesting that the offender's name be removed from the registry.

(3) The department shall develop policy and procedures to assist it in determining whether to remove the offender's name from the registry.

(d) Notwithstanding the provisions of this subchapter, with regard to an offender who was a child at the time of the act or omission that resulted in a true finding of child maltreatment, the department shall:

(1) Not remove the offender's name from the registry if the offender was found guilty of, pleaded guilty to, or pleaded nolo contendere to a felony in circuit court as an adult for the act that is the same act for which the offender is named in the registry unless the conviction is reversed or vacated; or

(2) Remove the offender's name from the registry if:

(A) The juvenile has reached eighteen (18) years of age or more than one (1) year has passed from the date of the act or omission that caused the true finding of child maltreatment and there have been no subsequent acts or omissions resulting in a true finding of child maltreatment; and

(B) The offender can prove by a preponderance of the evidence that the juvenile offender has been rehabilitated.

(3) If the department denies the request for removal of the name from the registry, the offender shall wait one (1) year from the date of the request for removal before filing a new petition with the department, requesting that the offender's name be removed from the registry.

(e)(1)(A) If the department denies the request for removal of the name from the registry, the offender may request an administrative hearing within thirty (30) days from receipt of the department's decision.

(B) The standard on review for the administrative hearing shall be whether the department abused its discretion.

(2)(A) At least ten (10) days prior to the administrative hearing, the alleged offender and the department shall share any information with the other party that the party intends to introduce into evidence at the administrative hearing that is not contained in the record.

(B) If a party fails to timely share information, the administrative law judge shall:

(i) Grant a continuance;

(ii) Allow the record to remain open for submission of rebuttal evidence; or

(iii) Reject the information as not relevant to the rehabilitation or the incident of child maltreatment.

(f) The Director of the Department of Human Services shall adopt rules necessary to carry out this chapter pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., except that the director shall not begin the process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., until the proposed rules have been reviewed by the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

History. Acts 2009, No. 749, § 1.

12-18-909. Availability of true reports of child maltreatment from the central registry.

(a) True reports of child maltreatment are confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services may charge:

(A) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, and mailing records of the investigative files of child maltreatment cases; and

(B) A reasonable fee for reproducing copies of tapes and photographs.

(2) A fee may not be charged to:

(A) A nonprofit or volunteer agency that requests searches of the investigative files; or

(B) A person who is indigent.

(c)(1) The department shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(d)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding information provided by the department.

(3) However, a local educational agency or a school counselor shall forward all true reports of child maltreatment received from the department when a child transfers from one (1) local educational agency to another and shall notify the department of the child's new school and address, if known.

(4) Nothing in this chapter shall be construed to prevent subsequent disclosure by the subject of the report.

(e)(1) The department may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

(2) This information may include:

(A) The investigative determination or the investigation report; and

(B) The services offered and provided.

(f) If an alleged offender's name has been provisionally placed in the Child Maltreatment Central Registry, any disclosure by the registry shall include the notation that the name has only been provisionally placed in the registry.

(g) A report made under this chapter that is determined to be true, as well as any other information obtained, including protected health information, and a report written or photograph or radiological procedure taken concerning a true report in the possession of the department shall be confidential and shall be made available only to:

(1) The administration of the adoption, foster care, children's and adult protective services programs, or child care licensing programs of any state;

(2) A federal, state, or local government entity, or any agent of the entity, having a need for the information in order to carry out its responsibilities under law to protect children from abuse or neglect;

(3) Any person who is the subject of a true report;

(4) A civil or administrative proceeding connected with the administration of the Arkansas Child Welfare State Plan when the court or hearing officer determines that the information is necessary for the determination of an issue before the court or agency;

(5) An audit or similar activity conducted in connection with the administration of such a plan or program by any governmental agency that may by law conduct the audit or activity;

(6)(A) A person, agency, or organization engaged in a bona fide research or evaluation project having value as determined by the department in future planning for programs for maltreated children or in developing policy directions.

(B) However, any confidential information provided for a research or evaluation project under this subdivision shall not be redisclosed.

(C) However, if a research or evaluation project results in the publication of related material, confidential information provided for a research or evaluation project under this subdivision shall not be disclosed;

(7) A properly constituted authority, including multidisciplinary teams referenced in this chapter, investigating a report of known or suspected child abuse or neglect or providing services to a child or family that is the subject of a report;

(8)(A) The Division of Child Care and Early Childhood Education of the Department of Human Services and the child care facility owner or operator who requested the registry information through a signed notarized release from an individual who is a volunteer, has applied for employment, is currently employed by a child care facility, or is the owner or operator of a child care facility.

(B) This disclosure shall be for the limited purpose of providing registry background information and shall indicate a true finding only;

(9) Child abuse citizen panels described in the Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a;

(10) Child fatality review panels as authorized by the department;

(11)(A) A grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury.

(B) The grand jury or court may disclose it to parties to a legal proceeding upon a finding that the report is necessary for the presentation of a party's complaint or defense and under such terms or protective order that the court orders;

(12) The current foster parents of a child who is a subject of a report;

(13)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(14) A Court Appointed Special Advocate upon presentation of an order of appointment for a child who is a subject of a report;

(15) The attorney ad litem of a child who is the subject of a report;

(16)(A) An employer or volunteer agency for purposes of screening an employee, applicant, or volunteer who is or will be engaged in employment or activity with children, the elderly, individuals with disabilities, or individuals with mental illness upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(B) The registry shall release only the following information on true reports to the employer or agency:

(i) That the employee, applicant, or volunteer has a true report;

(ii) The date the investigation was completed; and

(iii) The type of true report;

(17) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program;

(18) The Division of Child Care and Early Childhood Education of the Department of Human Services for purposes of enforcement of licensing laws and regulations;

(19) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(20) Any person or entity to whom notification was provided under this chapter; and

(21) Any school superintendent, principal, or a person in an equivalent position, or the Department of Education to the extent necessary to carry out its responsibility to ensure that children are protected while in the school environment or during off-campus school activities.

History. Acts 2009, No. 749, § 1.

12-18-910. Availability of screened-out and unsubstantiated reports.

(a) Screened-out and unsubstantiated reports of child maltreatment are confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services may charge:

(A) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, and mailing records of the investigative files of child maltreatment cases; and

(B) A reasonable fee for reproducing copies of tapes and photographs.

(2) A fee shall not be charged to:

(A) A nonprofit or volunteer agency that requests searches of the investigative files; or

(B) A person who is indigent.

(c)(1) The department shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(d)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding information provided by the department.

(3) Nothing in this chapter shall be construed to prevent subsequent disclosure by the subject of the report.

(e) Any record of a screened-out report of child maltreatment shall not be disclosed except to the prosecuting attorney and law enforcement and may be used only within the department for purposes of administration of the program.

(f) An unsubstantiated report, including protected health information, shall be confidential and shall be disclosed only to:

(1) The prosecuting attorney;

(2) A subject of the report;

(3)(A) A grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury.

(B) The grand jury or court may disclose it to parties to a legal proceeding upon a finding that the report is necessary for the presentation of a party's complaint or defense and under such terms or protective order that the court orders;

(4)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(5) Law enforcement;

(6) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

- (7) Adult protective services;
- (8) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program;
- (9) A Court Appointed Special Advocate upon presentation of an order of appointment for a child who is a subject of a report;
- (10) The attorney ad litem of a child who is the subject of a report; and
- (11) Any person or entity to whom notification was provided under this chapter.
- (g) Hard copy records of unsubstantiated reports shall be retained no longer than eighteen (18) months for purposes of audit.
- (h) Information on unsubstantiated reports included in the automated data system shall be retained indefinitely to assist the department in assessing future risk and safety.

History. Acts 2009, No. 749, § 1.

SUBCHAPTER 10 — PROTECTIVE CUSTODY

SECTION.	SECTION.
12-18-1001. Protective custody generally.	12-18-1008. Removal from home — Procedure.
12-18-1002. Placement in a foster home.	12-18-1009. When the investigation determines that the child can safely remain at home.
12-18-1003. Consent for health care and services.	12-18-1010. When a child maltreatment investigation is determined to be true.
12-18-1004. Notice when custody is invoked.	12-18-1011. When a report of child maltreatment is determined to be unsubstantiated.
12-18-1005. Location.	
12-18-1006. Custody of children generally — Health and safety of the child.	
12-18-1007. Services to families generally.	

12-18-1001. Protective custody generally.

- (a) A police officer, law enforcement, a juvenile division of circuit court judge during juvenile proceedings concerning the child or a sibling of the child, or a designated employee of the Department of Human Services may take a child into custody or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his or her custody without the consent of the parent or the guardian, whether or not additional medical treatment is required, if:
- (1) The child is subjected to neglect as defined under § 12-18-103(13)(B) and the department assesses the family and determines that the newborn and any other children, including siblings, under the custody or care of the mother are at substantial risk of serious harm such that the children need to be removed from the custody or care of the mother;

(2) The child is dependent as defined in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.; or

(3) Circumstances or conditions of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian, or caretaker presents an immediate danger of severe maltreatment.

(b) However, custody shall not exceed seventy-two (72) hours except in the event that the expiration of seventy-two (72) hours falls on a weekend or holiday, in which case custody may be extended through the next business day following the weekend or holiday.

History. Acts 2009, No. 749, § 1.

12-18-1002. Placement in a foster home.

A county sheriff or chief of police may place a child in a Department of Human Services foster home if:

(1) The county sheriff or chief of police contacts the on-call worker for the department and does not get a return phone call within thirty (30) minutes;

(2) The county sheriff or chief of police contacts the department Emergency Notification Line and does not get a return phone call within fifteen (15) minutes;

(3) The foster parent is personally well-known to the county sheriff or the chief of police;

(4) The county sheriff or chief of police has:

(A) Determined that the foster parent's home is safe and provides adequate accommodations for the child; and

(B) Performed a criminal record and child maltreatment check on the foster parent as required under § 9-28-409; and

(5) On the next business day, the county sheriff or chief of police immediately notifies the department of the time and date that the child was placed in the foster parent's home.

History. Acts 2009, No. 749, § 1.

12-18-1003. Consent for health care and services.

An individual taking a child into custody may give effective consent for medical, dental, health, and hospital services during protective custody.

History. Acts 2009, No. 749, § 1.

12-18-1004. Notice when custody is invoked.

In any case in which custody is invoked, the individual taking the child into custody shall notify the Department of Human Services in order that a child protective proceeding may be initiated within the time specified in this subchapter.

History. Acts 2009, No. 749, § 1.

12-18-1005. Location.

(a) A school, residential facility, hospital, or similar institution where a child may be located shall not require a written order for the Department of Human Services to take a seventy-two-hour hold under this section or § 9-27-313.

(b) Upon notice by the department that a hold has been taken on a child, a school, residential facility, hospital, or similar institution where the child is located shall:

(1) Retain the child until the department takes a hold on the child;

(2) Not notify the parent until the child has been removed by the department; and

(3) Provide the parent or guardian with the name and contact information of the department employee regarding the hold on the child.

History. Acts 2009, No. 749, § 1.

12-18-1006. Custody of children generally — Health and safety of the child.

(a) During the course of any child maltreatment investigation, whether conducted by the Department of Human Services, the Department of Arkansas State Police, or local law enforcement, the Department of Human Services shall assess whether or not the child can safely remain in the home.

(b) The child's health and safety shall be the paramount concern in determining whether or not to remove a child from the custody of his or her parents.

History. Acts 2009, No. 749, § 1.

12-18-1007. Services to families generally.

(a) The Department of Human Services shall have the authority to make referrals or provide services during the course of a child maltreatment investigation.

(b) Any family may request supportive services from the department.

(c) Supportive services shall be offered for the purpose of preventing child maltreatment.

History. Acts 2009, No. 749, § 1.

12-18-1008. Removal from home — Procedure.

(a) If an investigation under this chapter determines that the child cannot safely remain at home, the Department of Human Services shall

take steps to remove the child under custody as outlined in this chapter or pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(b) After the Department of Human Services has removed the child, the child shall be placed in a licensed or approved foster home, shelter, facility, or an exempt child welfare agency as defined at § 9-28-402(12).

(c) No one, including the family, the Department of Human Services, the Department of Arkansas State Police, or local law enforcement shall allow a child to be placed in a nonapproved or nonlicensed foster home, shelter, or facility.

History. Acts 2009, No. 749, § 1.

12-18-1009. When the investigation determines that the child can safely remain at home.

If an investigation under this chapter determines that a child can safely remain at home, the parents retain the right to keep the child at home or to place the child outside the home.

History. Acts 2009, No. 749, § 1.

12-18-1010. When a child maltreatment investigation is determined to be true.

(a) If an investigation under this chapter is determined to be true, the Department of Human Services may open a protective services case.

(b)(1) If the department opens a protective services case, it shall provide services to the family in an effort to prevent additional maltreatment to the child or the removal of the child from the home.

(2) The services shall be relevant to the needs of the family.

(c) If at any time during the protective services case the department determines that the child cannot safely remain at home, it shall take steps to remove the child under custody as outlined in this chapter or pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(d) Upon request, the department shall be provided at no cost a copy of the child's public and private school records if the department has an open protective services case.

(e) Upon request, the department shall be provided a copy of the results of radiology procedures, videotapes, photographs, or medical records on a child if the department has an open protective services case.

History. Acts 2009, No. 749, § 1.

12-18-1011. When a report of child maltreatment is determined to be unsubstantiated.

(a) If the report of child maltreatment is unsubstantiated, the Department of Human Services may offer supportive services to the family.

(b) The family may accept or reject supportive services at any time.

History. Acts 2009, No. 749, § 1.

SUBCHAPTER 11 — PUBLIC DISCLOSURE OF INFORMATION ON FATALITIES AND NEAR FATALITIES

SECTION.

- 12-18-1101. Procedure if the investigation is pending on a fatality.
- 12-18-1102. Procedure if the investigation results in a true report related to a fatality.
- 12-18-1103. Procedure if the investigation results in an unsubstantiated report related to a fatality.
- 12-18-1104. Information not to be released regarding a child fatality.
- 12-18-1105. Procedure if the investigation is pending related to a near fatality.

SECTION.

- 12-18-1106. Procedure if the investigation results in a true report related to a near fatality.
- 12-18-1107. Procedure if the investigation results in an unsubstantiated report related to a near fatality.
- 12-18-1108. Information not to be released in a child near fatality.

A.C.R.C. Notes. Acts 2009, No. 675, § 2, provided: “If a law is not enacted establishing a Child Maltreatment Act in Title 12, Chapter 18, of the Arkansas Code in the Eighty-Seventh Session of the General Assembly, the Arkansas Code Revision Commission shall assign this act to

Title 12, Chapter 12, of the Arkansas Code.”

Acts 2009, No. 749, established a Child Maltreatment Act in this chapter. As a result, Acts 2009, No. 675, is codified in this chapter.

12-18-1101. Procedure if the investigation is pending on a fatality.

Upon request, the Department of Human Services shall release the following information to the general public when an investigation is pending on a report of a fatality of a child to the Child Abuse Hotline:

- (1) Age, race, and gender of the child;
- (2) Date of the child’s death;
- (3) Allegations or preliminary cause of death;
- (4) County and placement of the child at the time of incident leading to the child’s death;
- (5) Generic relationship of the alleged offender to the child;
- (6) Agency conducting the investigation;
- (7) Legal action taken by the department;

(8) Services offered or provided by the department now and in the past; and

(9) Name of the child.

History. Acts 2009, No. 675, § 1.

12-18-1102. Procedure if the investigation results in a true report related to a fatality.

Upon request, the Department of Human Services shall release the following information to the general public when the investigative determination is true on a report of a fatality of a child:

(1)(A) A summary of previous child maltreatment investigations.

(B) If the previous investigation was determined true, the disclosure shall not include the name of the adult offender until due process is satisfied or the name of any offender who was under eighteen (18) years of age at the time of the act or omission of child maltreatment.

(C) If the previous investigation was determined unsubstantiated, the disclosure shall not include the name of the person alleged to be the offender;

(2) A summary of the current child maltreatment investigation, including:

(A) The nature and extent of the child's present and past injuries;

(B) Medical information pertaining to the death; and

(C) The name of the offender if due process has been satisfied or the offender has been arrested;

(3) All risk and safety assessments completed on the child;

(4) Information about criminal charges, if known; and

(5) Any action taken by the Department of Human Services or the Crimes Against Children Division of the Department of Arkansas State Police, including personnel action and licensing action.

History. Acts 2009, No. 675, § 1.

12-18-1103. Procedure if the investigation results in an unsubstantiated report related to a fatality.

Upon request, the Department of Human Services shall release the following information to the general public when the investigative determination is unsubstantiated on a report of a fatality of a child:

(1)(A) A summary of previous child maltreatment investigations.

(B) If the previous investigation was determined true, the disclosure shall not include the name of the adult offender until due process is satisfied or the name of any offender who was under eighteen (18) years of age at the time of the act or omission of child maltreatment.

(C) If the previous investigation was determined unfounded, the

disclosure shall not include the name of the person alleged to be the offender;

(2) A summary of the current child maltreatment investigation, including medical information pertaining to the death, however, the name of the alleged offender shall not be disclosed;

(3) All risk and safety assessments completed on the child;

(4) Information about criminal charges, if known; and

(5) Any action taken by the Department of Human Services or the Crimes Against Children Division of the Department of Arkansas State Police, including personnel action and licensing action.

History. Acts 2009, No. 675, § 1.

12-18-1104. Information not to be released regarding a child fatality.

Concerning the fatality of a child, the Department of Human Services shall not release:

(1) Information on siblings of the child;

(2) Attorney-client communications; or

(3) Any information if release of such information would jeopardize a criminal investigation.

History. Acts 2009, No. 675, § 1.

12-18-1105. Procedure if the investigation is pending related to a near fatality.

Upon request, the Department of Human Services shall release the following information to the general public when an investigation is pending on a report of a near fatality of a child to the Child Abuse Hotline:

(1) Age, race, and gender of the child;

(2) Date of the near fatality;

(3) Allegations or preliminary cause of the near fatality;

(4) County and placement of the child at time of the near fatality;

(5) Generic relationship of the alleged offender to the child;

(6) Agency conducting the investigation;

(7) Legal action taken by the department; and

(8) Services offered or provided by the department now and in the past.

History. Acts 2009, No. 675, § 1.

12-18-1106. Procedure if the investigation results in a true report related to a near fatality.

Upon request, the Department of Human Services shall release the

following information to the general public when the investigative determination is true on a report of a near fatality of a child:

(1) A nonidentifying summary of any previous child maltreatment investigations;

(2) A nonidentifying summary of the current child maltreatment investigation, including:

(A) The nature and extent of the child's present and past injuries; and

(B) Medical information pertaining to the incident;

(3) Information about criminal charges, if known; and

(4) Any action taken by the Department of Human Services or the Crimes Against Children Division of the Department of Arkansas State Police, including personnel action and licensing action.

History. Acts 2009, No. 675, § 1.

12-18-1107. Procedure if the investigation results in an unsubstantiated report related to a near fatality.

Upon request, the Department of Human Services shall release the following information to the general public when the investigative determination is unsubstantiated on a report of a near fatality of a child:

(1) A nonidentifying summary of any previous child maltreatment investigations;

(2) A nonidentifying summary of the current child maltreatment investigation;

(3) Information about criminal charges, if known; and

(4) Any action taken by the Department of Human Services or the Crimes Against Children Division of the Department of Arkansas State Police, including personnel action and licensing action.

History. Acts 2009, No. 675, § 1.

12-18-1108. Information not to be released in a child near fatality.

Concerning the fatality of a child, the Department of Human Services shall not release:

(1) Information on siblings of the child;

(2) Attorney-client communications; or

(3) Any information if release of such information would jeopardize a criminal investigation.

History. Acts 2009, No. 675, § 1.

CHAPTERS 19-24

[Reserved]

SUBTITLE 3. CORRECTIONAL FACILITIES AND PROGRAMS**CHAPTER 25****PUBLIC HEARING REQUIREMENTS PRIOR TO
LOCATION OF COMMUNITY-BASED RESIDENTIAL
FACILITIES**

SECTION.

12-25-101. Location or construction of
residential facilities forsexual or violent offenders
— Public hearings.**12-25-101. Location or construction of residential facilities for
sexual or violent offenders — Public hearings.**

(a)(1) No state agency, board, commission, or governing body of any municipality or county shall approve the location or construction of any community-based residential facility housing juveniles or adults adjudicated or convicted of any sexual or violent offense or any other offense that would constitute a Class C felony or higher, even if the facility otherwise conforms to applicable zoning ordinances, until a public hearing is conducted in the municipality or county of the proposed location of the facility at least thirty (30) days prior to the contracting for the acquisition of any property on which to locate the proposed facility or any existing structure in which to locate the proposed facility by the owner, operator, or care provider of the proposed facility.

(2) No community-based residential facility housing juveniles or adults adjudicated or convicted of any sexual or violent offense or any other criminal offense that would constitute a Class C felony or higher shall be located or constructed within any municipality or county of this state until a public hearing is conducted in the municipality or county of the proposed location of the facility at least thirty (30) days prior to the contracting for the acquisition of any property on which to locate the proposed facility or any existing structure in which to locate the proposed facility by the owner, operator, or care provider of the proposed facility.

(b) All residents within one thousand feet (1000') of the proposed location of the facility shall be notified by mail at least ten (10) days prior to the day of the hearing.

History. Acts 1997, No. 626, § 1; 2005, No. 1962, § 45.

A.C.R.C. Notes. As enacted by Acts 1997, No. 626, § 1, subsection (a) began:

“In order to ensure public notice and safety, from and after August 1, 1997,”.

Amendments. The 2005 amendment rewrote (a).

Cross References. Community-based residential programs and regulations, § 25-10-134.

CHAPTER 26

CRIMINAL DETENTION FACILITIES STANDARDS

SECTION.

- 12-26-101. Policy — Purpose of chapter.
- 12-26-102. Definitions.
- 12-26-103. Review coordinator.
- 12-26-104. [Repealed.]
- 12-26-105. Judicial district review committees created — Members.

SECTION.

- 12-26-106. Powers and duties of committees.
- 12-26-107. Inspection of facility — Report.
- 12-26-108. Failure to meet minimum standards — Procedure.
- 12-26-109. Advisory council.

Effective Dates. Acts 1983, No. 741, § 13: Mar. 23, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that a need exists to continue the adoption and enforcement of minimum standards for criminal detention facilities within this state, and that immediate action is necessary to achieve and facilitate an orderly transfer of the powers, functions, and duties of the Criminal Detention Facilities Board to the several Criminal Detention Facilities Review Committees created by this act. Therefore, an emergency is deemed to exist, and in order to protect the public peace, health, and safety, this act shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 882, § 4: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that a need exists to develop, update, and revise our minimum standards for local criminal detention facilities within the state, and that immediate action is necessary to achieve sorely needed changes to our present standards. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 515, § 8: Mar. 13, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is immediately necessary to provide for an adequate system of monitoring jails, juvenile detention facilities,

and criminal detention facilities to prohibit juveniles from being treated as criminals, to place such juveniles under proper care, to assure adequate standards for juvenile detention facilities, and to prohibit juveniles from associating with hardened adult criminals; and that the immediate passage of this act is necessary for the protection of juveniles. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation and protection of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it

shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uni-

form Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

12-26-101. Policy — Purpose of chapter.

(a) It is declared to be the policy of the State of Arkansas that all criminal detention facilities within the counties of the state shall conform to certain minimum standards of construction, maintenance, and operation.

(b) It is the purpose of this chapter to implement this policy by establishing a criminal detention facilities review committee within each of the judicial districts of the state with the authority and responsibility to administer the provisions of this chapter and other laws enacted relating to standards for criminal detention facilities.

History. Acts 1983, No. 741, § 1; A.S.A. 1947, § 46-1210.

12-26-102. Definitions.

As used in this chapter:

(1) “Committee” means the criminal detention facilities review committee established in each of the judicial districts of this state;

(2) “Criminal detention facility” means any institution operated by a political jurisdiction or a combination of jurisdictions for the care, keeping, or rehabilitative needs of adult criminal offenders, including regional jails, county jails, municipal jails, and temporary holding units;

(3) “Intermediate or long-term facility” means a criminal detention institution in which prisoners may be held from the time of intake through a one-year period;

(4) “Short-term facility” means any institution operated by a local unit of government in which persons may be incarcerated from the time of intake up to sixty (60) days; and

(5) “Twenty-four-hour or overnight facility” means any institution operated by a local government in which persons may be incarcerated from the time of intake up to twenty-four (24) hours.

History. Acts 1983, No. 741, § 2; 1985, No. 539, § 1; A.S.A. 1947, § 46-1211; Acts 2001, No. 1185, § 2; 2003, No. 1473, § 26.

12-26-103. Review coordinator.

(a) There is established the office of Criminal Detention Facilities Review Coordinator which shall consist of:

(1) A criminal detention facilities review coordinator, who shall be appointed by and serve at the pleasure of the Governor;

(2) A juvenile justice specialist; and

(3) An administrative assistant.

(b) The coordinator's office shall be responsible for promulgating minimum standards for the construction, maintenance, and operation of local, county, regional, or state criminal detention facilities and juvenile detention facilities in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) The coordinator shall perform all duties necessary to assure uniformity in the interpretation and administration of the minimum standards by the several committees.

History. Acts 1983, No. 741, § 7; A.S.A. 1947, § 46-1216; Acts 1989, No. 515, § 3; 2003, No. 1473, § 27.

12-26-104. [Repealed.]

Publisher's Notes. This section, concerning the Criminal Detention Facilities Review Commission, was repealed by Acts 2001, No. 1185, § 1. The section was derived from Acts 1985, No. 882, §§ 1, 2; A.S.A. 1947, §§ 46-1220, 46-1221; Acts 1987, No. 881, § 1; 1997, No. 250, § 69.

Acts 1983, No. 741, § 3, provided that,

as of the close of business on June 30, 1983, the Criminal Detention Facilities Board, created by Acts 1973, No. 244, § 3 [repealed], was abolished. The section further provided that all the powers, functions, and duties of that board would be assumed and carried out in accordance with the provisions of that act.

12-26-105. Judicial district review committees created — Members.

(a)(1) There is created within each judicial district a criminal detention facility review committee to be composed of at least five (5) members who are residents within the judicial district and who hold no public office.

(2) Each county within a judicial district shall have at least one (1) representative on the committee. If the number of counties in a judicial district exceeds five (5), the membership of the committee shall be increased to the nearest odd number that provides for representation from each county.

(3) There shall be at least one (1) member on each committee who is a youth services worker or juvenile advocate.

(b)(1) The membership of each committee shall be appointed by the Governor. The members shall be appointed for terms of four (4) years.

(2) Members of the committees are permitted to succeed themselves.

(3) In the event a vacancy occurs on a committee, the remaining members of the committee shall notify, in writing, the appointing body

of the vacancy, and the appointing body shall appoint another member to serve the remainder of the vacated term.

(c) Each year the members shall elect one (1) member to serve as chair.

(d) The committees shall function as state agencies. Members shall enjoy all of the rights and privileges of state officers while performing their duties as assigned by this chapter. This protection extends to any case that may arise as a result of those duties with no time limitation except as may already exist by other statutes.

(e) The members shall receive no compensation or remuneration, provided that the state shall reimburse the members for clerical and typing expenses approved by the Criminal Detention Facilities Review Coordinator. Members may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1983, No. 741, § 4; 1985, No. 539, §§ 2, 3; A.S.A. 1947, § 46-1213; Acts 1989, No. 515, § 1; 1997, No. 250, § 70.

Publisher's Notes. Acts 1983, No. 741, § 4, provided, in part, that the first criminal detention facility review committees would be appointed by May 1, 1983, and

that they would assume their powers, functions, and duties as set forth in the act on July 1, 1983. The section further provided that the members first appointed to the commissions would draw lots for their respective terms so that the expiration dates of the terms of the members would be staggered over three (3) years.

12-26-106. Powers and duties of committees.

The criminal detention facility review committees shall have the authority and responsibility to:

(1) Provide consultation and technical assistance to county and local government officials with respect to criminal detention facilities and juvenile detention facilities;

(2) Visit and inspect the criminal detention facilities and juvenile detention facilities for compliance with the standards as established under § 12-26-103;

(3) Advise government officials and other appropriate persons of deficiencies in the facilities and make recommendations for improvements;

(4) Submit written reports of the inspections to appropriate agencies and persons as provided in § 12-26-107;

(5) Review and comment on plans for the construction and major modification or renovation of the criminal detention facilities and juvenile detention facilities; and

(6) Perform such other duties as may be necessary to carry out the policy of the state regarding criminal detention facilities and juvenile detention facilities.

History. Acts 1983, No. 741, § 6; A.S.A. 1947, § 46-1215; Acts 1989, No. 515, § 2.

12-26-107. Inspection of facility — Report.

(a) Except as otherwise provided in this chapter, each criminal detention facility review committee shall visit and inspect each criminal detention facility and each juvenile detention facility, if any, in its judicial district at least annually for the purpose of determining the conditions of confinement, the treatment of prisoners, and whether the facilities comply with the minimum standards established pursuant to this chapter.

(b)(1) A written report of each inspection shall be made within thirty (30) days following such inspection to the chief circuit judge for the judicial district within which the facility is located and to the county judge or the governing body of the political subdivision whose facility is the subject of the report.

(2) The report shall specify those respects in which the facility does not comply with the required minimum standards.

History. Acts 1983, No. 741, § 8; A.S.A. 1947, § 46-1217; Acts 1989, No. 515, § 4.

12-26-108. Failure to meet minimum standards — Procedure.

(a)(1) If an inspection under this chapter discloses that the criminal detention facility or juvenile detention facility does not meet the minimum standards established by the Criminal Detention Facilities Review Coordinator, the criminal detention facility review committee shall send notice, together with the inspection report, to the governing body responsible for the criminal detention facility or juvenile detention facility and to the duly constituted grand jury for the county in which the criminal detention facility or juvenile detention facility is located.

(2) A copy of the notice required by this chapter shall also be sent to the chief circuit judge of the judicial district in which the facility is located.

(b) The appropriate governing body or the grand jury, or both, shall promptly meet to consider the inspection report, and the committee chair shall appear to advise and consult concerning appropriate corrective action.

(c) The governing body or the grand jury, or both, shall then initiate appropriate corrective action within six (6) months of the receipt of the inspection report or may voluntarily close the detention facility or the objectionable portion of the detention facility.

(d)(1) If the governing body or the grand jury fails to initiate corrective action within six (6) months after receipt of such inspection report, or fails to correct the disclosed conditions, or fails to close the detention facility or the objectionable portion thereof, the committee is authorized to petition a circuit court within the judicial district in which the facility is located to close the facility.

(2) The petition shall include the inspection report regarding the facility.

(3) The local governing body shall then have thirty (30) days to respond to the petition and shall serve a copy of the response on the committee chair by certified mail, return receipt requested.

(e) Thereafter, a hearing shall be held on the petition before the circuit court, and an order rendered by such court which:

- (1) Dismisses the petition of the committee;
- (2) Directs that corrective action be initiated in some form by the local governing body or by the grand jury with respect to the criminal detention facility in question; or

(3) Directs that the criminal detention facility be closed.

(f) An appeal from the decision of the circuit court may be taken to the Supreme Court.

History. Acts 1983, No. 741, §§ 9, 10; 1985, No. 539, § 4; A.S.A. 1947, §§ 46-1218, 46-1219; Acts 1989, No. 515, § 5.

12-26-109. **Advisory council.**

The Governor may establish a citizen advisory council composed of Arkansas citizens to advise the Criminal Detention Facilities Review Coordinator regarding jail standards.

History. Acts 2001, No. 1185, § 3.

CHAPTER 27

DEPARTMENT OF CORRECTION — DEPARTMENT OF
COMMUNITY CORRECTION

SECTION.	SECTION.
12-27-101. Purposes and construction of the Department of Correction.	ment of Correction — Records.
12-27-102. Enforcement of penalties — Report of crimes.	12-27-114. Inmates in county jails — Reimbursement of county — Medical care.
12-27-103. Department of Correction — Creation — Powers and duties.	12-27-115. Claims of counties for expenses — Verification.
12-27-104. Board of Corrections — Members — Records — Staff.	12-27-116. Use of fuel and provisions — Issuance or sale of items produced.
12-27-105. Board's powers and duties.	12-27-117. Employees' uniforms.
12-27-106. Publication of rules, laws, and regulations.	12-27-118. Employees' children — Transportation to school.
12-27-107. Director.	12-27-119. [Repealed.]
12-27-108. Authentication of records.	12-27-120. Retirement of employees.
12-27-109. Oaths of director and superintendents.	12-27-121. Transfer of inmates to foreign countries.
12-27-110. Administrative headquarters.	12-27-122. Debt service accounts.
12-27-111. Improvements.	12-27-123. Supervision and transfer of employees.
12-27-112. Sale of lands and facilities of the department.	12-27-124. Purposes and construction of the Department of Community Correction.
12-27-113. Commitments to the Depart-	

SECTION.

- 12-27-125. Department of Community Correction — Creation — Powers and duties.
- 12-27-126. Director.
- 12-27-127. Judicial transfer to the Department of Community Correction.
- 12-27-128. Department of Correction Nontax Revenue Receipts Fund.
- 12-27-129. Report on rehabilitation.
- 12-27-130. Reimbursement of county.
- 12-27-131. Receipts for reimbursement.
- 12-27-132. Award of pistol upon retirement.
- 12-27-133. Community Correction Revolving Fund.

SECTION.

- 12-27-134. Probation services.
- 12-27-135. Facility assignment.
- 12-27-136. Services and equipment.
- 12-27-137. Confidentiality of emergency preparedness documents.
- 12-27-138. [Repealed.]
- 12-27-139. Notice to police when furloughed inmate will be in jurisdiction.
- 12-27-140. Department of Community Correction Annual Report.
- 12-27-141. Department of Correction Annual Report.
- 12-27-142. Medical services contract.

Publisher's Notes. Acts 1933, No. 30, § 37, provided, in part, that laws not inconsistent with, or specifically repealed by, Acts 1933, No. 30 should apply to the Board of Penal Institutions.

Acts 1968 (1st Ex. Sess.), No. 50, § 44, provided, in part, that all laws relating to the State Penitentiary which were not specifically repealed by, or in conflict with, Acts 1968 (1st Ex. Sess.), No. 50 would apply to the Department of Correction.

Acts 1993, No. 958, § 5, provided: "Effective July 1, 1993, the Board of Parole and Community Rehabilitation created in ACA § 16-93-201 et seq. shall assume the name of Post Prison Transfer Board and shall assume the additional duties as defined in Act 530 of 1993."

Cross References. Emergency procedures to relieve prison overcrowding, § 12-28-601 et seq.

United States prisoners, duty to receive, § 12-41-510.

Preambles. Acts 1945, No. 13 contained a preamble which read: "The primary purpose of this act is to abolish the State Penal Building Commission, and to vest in the State Penitentiary Board all powers and duties heretofore vested in the State Penal Building Commission. All books, files and records of the State Penal Building Commission shall be delivered to the State Penitentiary Board...."

Acts 1973, No. 464 contained a preamble which read: "Whereas, the location of the administrative headquarters of the Department of Correction at Pine Bluff

would place the Department of Correction in a better location to serve the needs of the Cummins and Tucker Units, and would also permit the establishment of central warehouses and other facilities to serve the Cummins and Tucker Units and the Women's Reformatory, with resulting economies in the operation thereof;

"Whereas, the General Assembly has authorized the construction of a Women's Reformatory adjacent to the present Boys Training School facilities at Pine Bluff; and

"Whereas, the Board of Correction has recommended that the administrative headquarters of the Department of Correction be moved to the grounds of the new Women's Reformatory facility...."

Effective Dates. Acts 1893, No. 76, § 71: effective on passage.

Acts 1919, No. 482, § 6: Mar. 28, 1919. Emergency declared.

Acts 1933, No. 30, § 38: Feb. 14, 1933. Emergency clause provided: "It having been ascertained that the present method of operating the state penitentiary, penitentiary farms and other state penal institutions, is expensive and cumbersome and that the situation should be remedied as quickly as possible in order to save the taxpayers of Arkansas huge sums of money and to increase the efficiency of the penal institutions, an emergency is declared to exist and this act being necessary for the public peace, health, and safety, an emergency is declared to exist

and this act shall be in force from and after its passage and approval."

Acts 1968 (1st Ex. Sess.), No. 50, § 46: Mar. 1, 1968. Emergency clause provided: "The General Assembly finds that the penal system of the State of Arkansas is in need of immediate reform, in order better to effectuate the rehabilitation of persons convicted of crime and to make possible their return as useful members of the community, and that the immediate passage of this act is necessary to establish a Department of Correction to effectuate such rehabilitation. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after March 1, 1968."

Acts 1975, No. 733, § 3: Apr. 3, 1975. Emergency clause provided: "It has been found and it is hereby declared by the Seventieth General Assembly that it is immediately necessary that the Commissioner of Correction be provided with an official seal of office in order to properly perform the assigned functions of his office and properly authenticate documents and records of the Arkansas Department of Correction for use in judicial proceedings. Therefore, an emergency is declared to exist and this act, being immediately necessary for the preservation of the public peace, health, and safety and to insure the proper administration of justice shall be in full force and effect upon its passage and approval."

Acts 1977, No. 935, § 2: Mar. 31, 1977. Emergency clause provided: "The General Assembly finds that there exists a need for greater efficiency in the issuing of warrants for the retaking of persons who escape from the lawful custody of the Department of Correction. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect upon its passage and approval."

Acts 1979, No. 661, § 3: Mar. 29, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the per diem for the Board of Correction is not sufficient to reimburse citizens for their cost of serving in this vital function, and that an increase is necessary for the continued effective supervision and manage-

ment of the department, and for the continued orderly operation of state government. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after the effective date of its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 37, § 3: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the per diem for the Board of Correction is not sufficient to reimburse citizens for their cost of serving in this vital function, and that an increase is necessary for the continued effective supervision and management of the department, and for the continued orderly operation of state government. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the effective date of its passage and approval."

Acts 1981, No. 58, § 7: approved Feb. 12, 1981. Emergency clause provided: "The General Assembly finds that the penal system of the State of Arkansas is in need of immediate reform, in order to better effectuate the rehabilitation of persons convicted of crimes and to make possible their return as useful members of the community, and that the immediate passage of this act is necessary to facilitate these reforms. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage."

Acts 1981, No. 139, § 2: Feb. 26, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the above mentioned act is severely outdated; that sometimes it is necessary for a prison employee to use certain items with the permission of the director; that the above mentioned act is much too restrictive and hard to enforce. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect after its passage and approval."

Acts 1985, No. 648, § 27: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1985."

Acts 1985, No. 734, § 3: Mar. 29, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present compensation for Board of Correction members is too low and this act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 953, § 31: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1989, No. 708, § 4: Mar. 20, 1989. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that the language of the current law relating to the per diem and expenses of the State Board of Correction for attending meetings of the board and other business of the board is in urgent need of clarification; that this act is designed to clarify the same and should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 819, § 6: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly that the Arkansas Department of Correction is to receive \$22.5 million from bond proceeds issued by the State of Arkansas through the Arkansas Development Finance Authority and that the purchaser of such bonds require that legislation be enacted authorizing the creation of various accounts in financial institutions outside of the State Treasury. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 118, § 37: July 1, 1989 except §§ 33-37, effective June 23, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety Sections 1 through 32 shall be in full force and effect from and after July 1, 1989 and Sections 33 through 37 shall be in full force and effect upon the date of its passage and approval."

Acts 1991, No. 574, § 8: Mar. 15, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law persons sentenced to the Department of Correction and awaiting transfer to the department are entitled to earn meritorious goodtime during such wait only if the delay is due to lack of space in the Department of Correction facilities; that it is only fair that those persons be permitted to earn meritorious goodtime while waiting for transfer for whatever reason; that this act is designed to correct this situation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 644, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 1078, § 37: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision

of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 658, § 3: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to utilize all existing bed space in the Department of Correction, and that this act is designed to accomplish this purpose. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 697, § 8: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Department of Correction is in need of a non-tax receipt cash fund for immediate deposit of funds to supplement the Department's operation and this act should be given effect immediately in order to provide such relief. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 911, § 38: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1993, No. 953, § 24: July 1, 1993. Emergency clause provided: "It is hereby

found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1994 (2nd Ex. Sess.), No. 26, § 5: Aug. 23, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that authority is needed by the Board of Correction and Community Punishment to enable its members to receive per diem for attending to Board business; that the provisions of the act will provide the necessary authority to continue the effective and efficient monitoring of the operations of the Department of Corrections, and that the delay in the effective date of this act could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, in order to promote effective and efficient administration of government programs, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 158, § 31: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the

effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 195, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 316, § 19: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 1170, § 13: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists regarding

the status of ineligible offenders judicially transferred to Department of Community Punishment facilities; that there is an immediate need to clarify the law applicable to transferring ineligible offenders back to the Department of Correction; and that it is in the best interest of the courts which already have crowded documents to immediately reduce the reporting requirements for departure sentences. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 324, § 9: Mar. 3, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on State Agencies and Governmental Affairs and in its place established the House Interim Committee and Senate Interim Committee on State Agencies and Governmental Affairs; that various sections of the Arkansas Code refer to the Joint Interim Committee on State Agencies and Governmental Affairs and should be corrected to refer to the House and Senate Interim Committees on State Agencies and Governmental Affairs; that this act so provides; and that this act should go into effect immediately in order

to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1142, § 18: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

Acts 2003, No. 1031, § 7: Apr. 2, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the 'Task Force to Study the Disparity in Sentencing for Persons Convicted of Non-violent Crimes' has found that it appears that some Arkansas citizens do not receive equitable sentences under the law; that it is necessary to compile statistical sentencing information in order to determine if disparities exist; and that this act is immediately necessary to allow the compiling of the needed statistical information in the first quarter of 2003. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period

of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2006 (1st Ex. Sess.), No. 4, § 11: Apr. 7, 2006. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the need to register sex offenders and update the registration files of sex offenders is necessary to ensure the safety of the citizens of the State of Arkansas; that the provisions of this act will improve the process of registering sex offenders and updating the registration files of sex offenders; and that this act is immediately necessary because of the public risk posed by sex offenders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 1291, § 48: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the

agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007.”

Acts 2009, No. 958, § 2: July 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the appointment of capable and qualified people to serve on the Board of Corrections is of vital importance for the proper discharge of the duties imposed on the board; and that a fair system of per diem stipends and expense reimbursement for the Board of Corrections is necessary to keep and attract capable and qualified people to serve and should be implemented as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Criminal Procedure, 16 U. Ark. Little Rock L.J. 99.

12-27-101. Purposes and construction of the Department of Correction.

(a)(1) The purpose of this act is to establish a Department of Correction that shall assume the custody, control, and management of the state penitentiary, execute the orders of criminal courts of the State of Arkansas, and provide for the custody, treatment, rehabilitation, and restoration of adult offenders as useful law-abiding citizens within the community.

(2) The department shall be under the supervision and control of the Board of Corrections.

(3) To accomplish the objectives and purposes of this act in an effective, coordinated, and uniform manner, the department shall be responsible for the maintenance, supervision, and administration of adult detention and correctional services of the state as determined by the board.

(4) Institutions and services shall be diversified in program, construction, and staff to provide effectually and efficiently for the maximum custody, care, supervision, and treatment of those persons committed to the department.

(b) This act shall be liberally construed so as to effectuate its purposes.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 1; A.S.A. 1947, § 46-100; Acts 1993, No. 549, § 1.

Meaning of "this act". Acts 1968 (1st Ex. Sess.), No. 50, codified as §§ 12-27-101 — 12-27-105, 12-27-107 — 12-27-109, 12-27-112, 12-27-113, 12-27-115, 12-27-118, 12-27-120, 12-28-102, 12-29-101 —

12-29-104, 12-29-107, 12-29-112, 12-29-401, 12-30-301, 12-30-306, 12-30-401, 12-30-403, 12-30-405 — 12-30-407, 12-30-408 [repealed], 16-93-101, 16-93-102, 16-93-201 [repealed], 16-93-202 — 16-93-204, 16-93-601, 16-93-610, 16-93-701, 16-93-705.

CASE NOTES

Construction With Other Law.

Inmate who asserted wool blankets caused him to suffer rashes did not show a serious medical need that would have supported a claim of a violation of Ark. Const. Art. 2, § 9 or § 16-123-105 of the Arkansas Civil Rights Act; the inmate's condition was not one that mandated treatment even though it may have been diagnosed by a doctor and, while the evidence showed he indeed suffered from discom-

fort and rashes, he had been provided with adequate treatment for those symptoms. *Williams v. Ark. Dep't of Corr.*, — Ark. —, 207 S.W.3d 519 (2005), rehearing denied, — Ark. —, — S.W.3d —, 2005 Ark. LEXIS 381 (June 16, 2005), cert. denied, 546 U.S. 1018, 126 S. Ct. 647, 163 L. Ed. 2d 531 (2005).

Cited: *Edens v. State*, 258 Ark. 734, 528 S.W.2d 416 (1975).

12-27-102. Enforcement of penalties — Report of crimes.

(a) All laws of this state prescribing penalties for violations concerned with or affecting the state penitentiary or inmates thereof shall be equally applicable to the Department of Correction and shall be enforced accordingly.

(b) In the event any crime shall be committed in any institution of the department, it shall be the duty of the Director of the Department of Correction, or his or her designated employee, to report the crime to the county sheriff and prosecuting attorney of the county in which the institution is located in which the crime, or alleged crime, took place.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 22; A.S.A. 1947, § 46-131.

12-27-103. Department of Correction — Creation — Powers and duties.

(a) There is established, under the supervision, control, and direction of the Board of Corrections, a Department of Correction.

(b) The Department of Correction shall have the following functions, powers, and duties, administered in accordance with the policies, rules, and regulations promulgated by the Board of Corrections:

(1) The Department of Correction shall have exclusive jurisdiction over the care, charge, custody, control, management, administration, and supervision of all persons and offenders committed to, or in the custody of, the state penitentiary;

(2) The Department of Correction shall assume management and control over all properties, both real and personal, facilities, books, records, equipment, supplies, materials, contracts, funds, moneys, equities, and all other properties belonging to the state penitentiary, except those deemed by the board to be more appropriate for placement in the Department of Community Correction. The Department of Correction shall administer said properties in accordance with the provisions of this act and other laws applicable to the administration of the state correctional system;

(3) The Department of Correction shall assume all obligations, contracts, indebtedness, liabilities, and other obligations of the state penitentiary system existing on March 1, 1968;

(4)(A) The Department of Correction shall have custody, management, and control over all institutions and facilities, and the inmates therein, now belonging to the state penitentiary or hereafter established by the Department of Correction for the custodial correction and rehabilitation of persons committed to the department for its care, except for those institutions established by or transferred to the Department of Community Correction.

(B) Legal custody of inmates transferred to the Department of Community Correction shall remain with the Department of Correction unless altered by court order;

(5) The Department of Correction shall establish and operate classification committees, diagnosis and treatment programs, and such other programs as may be desirable to fulfill the purposes of this act;

(6) The Department of Correction shall employ such officers, employees, and agents and shall secure such offices and quarters as are deemed necessary to discharge the functions of the Department of Correction;

(7) The Department of Correction shall receive all offenders committed to the Department of Correction for conviction of felonies or other offenses, the punishment of which is commitment to the penitentiary under the laws of this state, and shall be responsible for the care, custody, and correction of such persons pursuant to policies established by the Board of Corrections;

(8) The Department of Correction shall operate all farming, livestock, industries, and other income-producing facilities of the Depart-

ment of Correction and shall sell the products of its industries and farms in the manner provided by law;

(9) The Department of Correction may establish and operate regional adult detention facilities, provided funds therefor have been authorized and appropriated by the General Assembly;

(10) The Department of Correction shall cooperate with municipalities and counties in this state in providing consulting services when requested with respect to detention and correctional facilities operated by the municipalities or counties;

(11) The Department of Correction shall cooperate with law enforcement agencies of this state, the United States, institutions of this state for the detention, custody, and care of delinquent and dependent juveniles, and with all agencies and departments of this state offering services or programs of welfare, rehabilitation, and other services for the benefit of persons committed to the Department of Correction;

(12) The Department of Correction may accept gifts, grants, and funds from public and private sources with prior approval of the Board of Corrections and administer the same in furtherance of the purposes of this act;

(13)(A) The Department of Correction shall have the authority to issue warrants for the retaking of any person who, committed to its custody, unlawfully escapes therefrom.

(B) The warrant shall:

(i) Authorize all law enforcement officials of this state to take custody and return the person named therein to the custody of the Department of Correction; and

(ii) Authorize all law enforcement officials of this state, any other state, and the federal government to take custody and detain the person in any suitable detention facility while awaiting further transfer to the Department of Correction;

(14) The Department of Correction may cooperate with and contract with the federal government, governmental agencies of Arkansas and other states, political subdivisions of Arkansas, and private contractors to provide and improve correctional operations;

(15) The Department of Correction shall cooperate with the Department of Community Correction, the Parole Board, the Arkansas Sentencing Commission, judicial districts, municipalities, and counties in this state in providing guidance and services required to ensure a full range of correctional options for the state as a whole;

(16) The Department of Correction shall provide support to the Department of Community Correction as determined by the Board of Corrections;

(17) The Department of Correction shall assist the Board of Corrections in the furtherance of its goals by staffing the specific charges articulated for it through legislation and by the Board of Corrections; and

(18) The Department of Correction shall establish programs of research, evaluation, statistics, audit, and planning, including studies

and evaluation of the performance of various functions and activities of the department and studies affecting the treatment of offenders and information about other programs.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 3; 1977, No. 935, § 1; A.S.A. 1947, § 46-103; Acts 1993, No. 549, § 2.

A.C.R.C. Notes. Acts 1968 (1st Ex. Sess.), No. 50, § 3 transferred the powers and duties of the State Penitentiary to the

Department of Correction.

Meaning of "this act". See note to § 12-27-101.

Cross References. Parole Board, § 16-93-201 et seq.

CASE NOTES

Exclusive Jurisdiction.

Trial court had no authority to grant prisoner's petition that time served prior to escape be credited on his sentence, since when a valid sentence has been put into execution, Department of Correction has responsibility for prior administration. *Charles v. State*, 256 Ark. 690, 510 S.W.2d 68 (1974).

The exclusive jurisdiction of custody,

control, and supervision of all persons in the penitentiary is vested with the Department of Correction and a trial court cannot intervene in the administration of prison affairs. *Stevens v. State*, 262 Ark. 216, 555 S.W.2d 229 (1977).

Cited: *Eldridge v. Board of Cor.*, 298 Ark. 467, 768 S.W.2d 534 (1989); *Lanford v. State*, 33 Ark. App. 11, 800 S.W.2d 434 (1990).

12-27-104. Board of Corrections — Members — Records — Staff.

(a) The Board of Corrections shall be composed of seven (7) voting members:

- (1) Five (5) citizen members;
- (2) The chair of the Parole Board; and
- (3) One (1) member of a criminal justice faculty who is employed at any four-year university in Arkansas.

(b) The Board of Corrections shall elect a chair annually in accordance with rules and regulations developed by the Board of Corrections.

(c)(1) All members of the Board of Corrections shall serve a term of seven (7) years, unless they resign or are removed.

(2) Vacancies occurring before the expiration of a term shall be filled in the manner provided for members first appointed.

(3) Members shall serve until their replacements are appointed.

(4) The Governor shall appoint those members not determined by virtue of their office when vacancies occur.

(d)(1)(A) A member of the Board of Corrections may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(B) However, a member shall receive a per diem stipend and reimbursement for expenses for both official meetings and related activities associated with attending to the business of the Board of Corrections, the Department of Correction, the Department of Community Correction, and the Corrections School System for up to an annual average of seven (7) days per month.

(C) The reimbursement for use of private airplanes shall be in accordance with state travel rules.

(D) A public university employee or other state employee who serves on the Board of Corrections is allowed to receive a per diem stipend and reimbursement of expenses for both official meetings and related activities associated with attending to the business of the Board of Corrections.

(2) All expenses that may be reimbursed to members of the Board of Corrections and stipends as provided in § 25-16-901 et seq. shall be payable from the maintenance funds appropriated for the Department of Correction and the Department of Community Correction.

(e) The Governor shall appoint an advisory judicial group to facilitate coordination among the judicial system, the Department of Correction, and the Department of Community Correction to promote the effective and efficient use of correctional resources in furtherance of sentencing policy adopted by the General Assembly.

(f) The Board of Corrections, in cooperation with the Governor, may establish additional advisory groups composed of professionals from the criminal justice system and citizens representing specific criminal justice interest groups to assist the Board of Corrections in its charge.

(g) The Board of Corrections shall meet no less than quarterly.

(h) The Board of Corrections shall submit to the Governor and the General Assembly a biennial report six (6) months prior to the convening of the regular session.

(i)(1) The Board of Corrections shall keep regular minutes of all its meetings, visits, and proceedings and shall cause the minutes, together with all orders, rules, and regulations adopted by it, to be recorded in a book which shall be kept by the secretary of the Board of Corrections for that purpose.

(2) The record shall be signed by the members of the Board of Corrections present at the meeting or visit and shall at all times be open to the inspection of the Governor or any member of the General Assembly.

(j)(1) The Board of Corrections shall employ necessary staff to assist with the range and diversity of its charge.

(2) In addition to Board of Corrections staff, the Board of Corrections may reassign staff from the departments it governs for either short-term or long-term service to the Board of Corrections.

History. Acts 1893, No. 76, § 46, p. 121; C. & M. Dig., § 9719; Acts 1919, No. 482, § 4; Pope's Dig., § 12750; Acts 1968 (1st Ex. Sess.), No. 50, § 2; 1975, No. 378, § 12; 1979, No. 661, § 1; 1979, No. 918, § 1; 1980 (1st Ex. Sess.), No. 37, § 1; 1985, No. 734, § 1; A.S.A. 1947, §§ 7-203.2, 46-101, 46-102; Acts 1989, No. 708, § 1; 1989, No. 937, § 4; 1993, No. 549, § 3; 1994 (2nd Ex. Sess.), No. 26, § 1; 1997, No. 250, § 71; 2009, No. 958, § 1; 2009, No. 962, § 29.

A.C.R.C. Notes. Acts 2001, No. 323, § 1, provided: "Legislative intent. The

General Assembly, in Act 549 of 1993, established the Arkansas Department of Community Punishment and delineated its purposes. Confusion in the public's perception, with regard to the purposes of the department, exists and will persist because of the inconsistency between the name of the department and its established purposes. The purpose of this act is to provide the department with a name that more accurately describes its role as an agency that is intended to fulfill the legislatively established purposes of supervision, treatment, rehabilitation, and

restoration of adult offenders as useful law-abiding citizens within the community and to provide its supervisory board with a name consistent with the department's name change."

Acts 2001, No. 323, § 3, provided: "The 'Board of Correction and Community Punishment', as established in Arkansas Code 12-27-104 and 16-93-1203, shall hereafter be known as the 'Board of Corrections'."

Publisher's Notes. Acts 1993, No. 549, § 3 provided in part that the Board of Correction and the Arkansas Adult Probation Commission shall merge to become the Board of Correction and Community Punishment. Initial appointments to the merged board shall be from the existing Board of Correction, Board of Parole and Community Rehabilitation and Arkansas Adult Probation Commission, except in the case of the criminal justice faculty member who shall be chosen at large. Members of the merged board shall serve a term of seven years, and vacancies

which occur after the initial merger shall be filled by gubernatorial appointment. The initial terms of the six (6) members of the board, not determined by virtue of their office, are to be staggered with one member serving until December 31, 1995, one member serving until December 31, 1996, one member serving until December 31, 1997, one member serving until December 31, 1998, one member serving until December 31, 1999, and one member serving until December 31, 2000. The Board shall be impaneled by July 1, 1993, and shall assume power on July 1, 1993, and shall hold its initial meeting within forty-five (45) days of August 13, 1993.

Amendments. The 2009 amendment by No. 958 rewrote (d)(1)(B), substituted "rules" for "regulations" in (d)(1)(C), inserted (d)(1)(D), and made a minor stylistic change.

The 2009 amendment by No. 962 substituted "regular" for "next regularly scheduled legislative."

CASE NOTES

Suits Against Board.

The board is an agency of the state and as such is not amenable to suits in the state courts. *Pitcock v. State*, 91 Ark. 527, 121 S.W. 742 (1909) (decision under prior law).

A suit against the board to reform a contract for the purchase of a state convict farm is in effect a suit against the state. *Jobe v. Urquhart*, 98 Ark. 525, 136 S.W. 663 (1911) (decision under prior law).

12-27-105. Board's powers and duties.

(a) The purpose of the Board of Corrections is to manage correctional resources in the state such that offenders are held accountable for their actions, victims' needs are addressed in a positive manner, and the safety of society is enhanced.

(b) In furtherance of its purpose, the Board of Corrections shall have the following powers and duties:

(1)(A) General supervisory power and control over the Department of Correction and the Department of Community Correction and shall perform all functions with respect to the management and control of the adult correctional institutions and community correction options of this state contemplated by Arkansas Constitution, Amendment 33.

(B) No provision of this act shall abridge, diminish, or curtail in any respect the authority vested in the Board of Corrections as the successor to the State Penitentiary Board and the Arkansas Adult Probation Commission to govern and supervise the administration of the state penal institutions and community correction options;

(2) To coordinate resources for the corrections system, in conjunction with sentencing policy developed by the Arkansas Sentencing Commis-

sion, in a fashion that best serves the needs of the state, the entities encompassed, and the individuals served by and affected by corrections;

(3) To review and approve budgets submitted by the Department of Correction and the Department of Community Correction prior to submission for executive and legislative approval;

(4) To develop and approve policy and management decisions for the Department of Correction and the Department of Community Correction, evaluating their impact on corrections as a whole;

(5) To assist in the development of impact statements and recommendations on all existing and proposed legislation with regard to its effect on corrections as a whole, in cooperation and coordination with the commission;

(6) To coordinate the implementation and continued utilization of community correction options in support of sentencing policies developed by the commission;

(7) To investigate, monitor, and address the needs of the state for adequate housing, treatment, and employment of individuals involved in state-funded correctional programs, facilities, and states of supervision;

(8) To establish programs of research, statistics, and planning, including studies and evaluation of the performance of the various functions and activities of the board, in cooperation and coordination with the commission;

(9) Appoint temporary or permanent advisory committees for such purposes as it may determine;

(10)(A) Authorized and empowered to investigate, consider, and determine the needs of the state for adequately housing, treating, and employing prisoners of the state and to provide adequate facilities for such housing, treatment, and employment.

(B) The Board of Corrections is authorized and empowered to obtain and approve plans and specifications for the necessary buildings and plants to meet such needs and to provide for the construction and equipment of such buildings and plants;

(11) By and with the advice and approval of the Governor, at its discretion may close the operation of any penal institution or prison farm if it deems such action necessary and more economical;

(12) To establish minimum standards for supervision, contact, programming, housing, and employee hiring within the parameters of those departments encompassed under its control;

(13) To establish a code of ethics for all employees, both institutional and community correction;

(14) To require and review annual audits of appropriate programs and facilities associated with the Board of Corrections;

(15) To prescribe the duties of all personnel of the Department of Correction and the Department of Community Correction and the regulations governing the transfer of employees within each department and between departments;

(16) Authorized to review, approve, make application for, and accept grants, gifts, and funds from any entity on behalf of any entity

encompassed within the control of the Board of Corrections in carrying out and completing such projects as may be approved for the enumerated purposes and projects of this section;

(17)(A) Authorized to establish fees to be levied by the courts and paid by probationers during the probationary period.

(B) The Board of Corrections may also establish fees found necessary for participation in any community correction program or service.

(C) The payment of such sanctions and fees may be a condition of probation, parole, post prison transfer, or attached to admission and participation in a community correction program.

(D) The moneys collected shall be deposited in an earmarked account at the state level to be used solely for the continuation and expansion of community correction in this state.

(E) Economic sanction officers are to be authorized by the Department of Community Correction to perform these duties pursuant to policies and procedures adopted by the Board of Corrections and in accord with any state statutory accounting requirements; and

(18) To delegate duties to Board of Corrections staff and departmental staff as necessary and appropriate to fulfill its responsibilities to the state.

History. Acts 1933, No. 30, § 28; Pope's 378, § 12; A.S.A. 1947, §§ 46-101, 46-108 Dig., §§ 12695, 12775, 12776; Acts 1937, — 46-110; Acts 1993, No. 549, § 4.
No. 140, §§ 2, 3; 1945, No. 13, §§ 2, 3; **Meaning of "this act".** See note to
1968 (1st Ex. Sess.), No. 50, § 2; 1975, No. § 12-27-101.

12-27-106. Publication of rules, laws, and regulations.

It shall be the duty of the Board of Corrections to publish in pamphlet form and to post in conspicuous places about the Department of Correction farms and all other penal institutions all rules, laws, and regulations promulgated by the board with reference to the conduct of the prisoners confined therein.

History. Acts 1933, No. 30, § 11; Pope's Dig., § 12655; A.S.A. 1947, § 46-132.

12-27-107. Director.

(a) The Director of the Department of Correction, who shall be the executive, administrative, budgetary, and fiscal officer of the department, shall be appointed by the Board of Corrections at a salary fixed by the Board of Corrections which shall not exceed the maximum salary for the position established by law.

(b) The director shall be qualified for the position by character, ability, education, training, and successful administrative experience in correctional or related fields.

(c) The director shall serve at the pleasure of the Board of Corrections.

(d) Subject to the rules, regulations, policies, and procedures prescribed by the Board of Corrections, the director shall:

(1) Administer the Department of Correction and supervise the administration of all institutions, facilities, and services under the jurisdiction of the Department of Correction;

(2) Employ such personnel as are required in the administration of the provisions of this act, provided that the employment of personnel shall be in accordance with the applicable laws and personnel regulations of the state;

(3) Institute programs for the training and development of personnel within the Department of Correction and have authority to suspend, discharge, or otherwise discipline personnel in accordance with policies prescribed by the Board of Corrections;

(4) Make an annual report to the Board of Corrections, which will be forwarded to the Governor and the General Assembly, on the work of the Department of Correction, including statistics and other data, income derived by the Department of Correction from agriculture, livestock, and other farming activities and from prison inmates' activities, a summary of expenditures of the Department of Correction, and progress reports regarding internal issues such as inmate discipline, utilization of programming, facilities and bed space utilization, upkeep issues, and construction needs;

(5) Cooperate with the Department of Community Correction, the Parole Board, the Arkansas Sentencing Commission, judicial districts, counties, and municipalities to provide the guidance and services required to ensure a full range of correctional options for the state as a whole; and

(6)(A) Designate those employees of the Department of Correction who shall have the powers of peace officers in the enforcement of criminal laws to the extent they apply to employees, inmates, and persons on Department of Correction property, while participating in the search and capture of an inmate who has escaped custody, or while assisting law enforcement officers in the search and capture of any fugitive or escapee from another jurisdiction.

(B) The employees so designated have the authority to use blue rotating or flashing emergency lights on Department of Correction vehicles and exercise other law enforcement powers exercised by police and other law enforcement personnel.

History. Acts 1968 (1st Ex. Sess.), No. 50, §§ 4, 5; 1975, No. 733, § 1; A.S.A. 1947, §§ 46-104, 46-105; Acts 1993, No. 549, § 5; 1997, No. 943, § 1; 2003, No. 351, § 1.

A.C.R.C. Notes. Acts 1993, No. 911, § 9, provided: "Notwithstanding any other provision of law, the Governor shall initially appoint the Director of the De-

partment of Correction after which the Board of Correction and Community Punishment shall appoint the Director of the Department with the advice of the Governor."

Meaning of "this act". See note to § 12-27-101.

Cross References. Interstate Corrections Compact, § 12-49-101 et seq.

CASE NOTES

Cited: *Messimer v. Lockhart*, 702 F.2d 729 (8th Cir. 1983).

12-27-108. Authentication of records.

(a) For authentication of the records, process, and proceedings of the Department of Correction, the Director of the Department of Correction may adopt and keep an official seal for the use of his or her office, and the seal shall receive judicial notice in all of the courts of the state.

(b) All acts, orders, regulations, reports, and other records of the department or copies thereof which are entitled to judicial notice shall be certified to by the director with the seal affixed thereto.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 4; 1975, No. 733, § 1; A.S.A. 1947, § 46-104.

12-27-109. Oaths of director and superintendents.

The Director of the Department of Correction and each of the superintendents of the institutions within the Department of Correction shall, before entering upon their respective duties, take and subscribe to and file in the office of the Secretary of State, an oath that he or she will support the Constitution of the United States and the Constitution of the State of Arkansas and faithfully perform the duties upon which he or she is about to enter.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 4; 1975, No. 733, § 1; A.S.A. 1947, § 46-104.

12-27-110. Administrative headquarters.

The Board of Corrections shall locate the administrative headquarters of the Department of Correction and the Department of Community Correction at a suitable site or sites to be chosen by the board.

History. Acts 1973, No. 464, § 1; A.S.A. 1947, § 46-103.1; Acts 2001, No. 614, § 1.

12-27-111. Improvements.

(a) The Board of Corrections and the Director of the Department of Correction shall decide what improvements are necessary, which are not otherwise provided by law. These improvements shall be made under the direction and supervision of the director.

(b) In making any necessary improvements under the provisions of this section, if in his or her discretion it shall be deemed necessary, the director may employ the services of an engineer, draftsman, or architect to make such plans and specifications as may be necessary.

History. Acts 1893, No. 76, § 63, p. 121; C. & M. Dig., § 9717; Pope's Dig., § 12748; A.S.A. 1947, § 46-114.

12-27-112. Sale of lands and facilities of the department.

(a) None of the lands under the control and jurisdiction of the State Penitentiary on March 1, 1968, shall be sold or otherwise disposed of by the Board of Corrections or the Department of Correction except upon specific authorization by the General Assembly.

(b)(1) The authority granted state boards and commissions to sell land belonging to state institutions, as provided in §§ 22-6-601 and 22-6-602, shall not be applicable to the penitentiary, the board, and the department.

(2) It is the intent of this section that lands under the control and jurisdiction of the penitentiary on March 1, 1968, may be sold or otherwise disposed of only upon specific authorization therefor by laws enacted by the General Assembly subsequent to March 1, 1968.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 40; A.S.A. 1947, § 46-111.

A.C.R.C. Notes. The powers and duties of the State Penitentiary referred to in

this section were transferred to the Department of Correction by Acts 1968 (1st Ex. Sess.), No. 50, § 3.

12-27-113. Commitments to the Department of Correction — Records.

(a)(1) All commitments to the Department of Correction shall be to the Department of Correction and not to a particular institution.

(2) Commitments may provide for judicial transfer to the Department of Community Correction.

(b)(1) The Director of the Department of Correction, in accordance with the rules, procedures, and regulations promulgated by the Board of Corrections shall transfer an inmate to the Department of Community Correction, pursuant to a judicial transfer, or assign a newly committed inmate to an appropriate facility of the Department of Correction.

(2) The director may transfer an inmate from one (1) facility to another consistent with the commitment and in accordance with treatment, training, and security needs.

(3) Inmates may be transferred between the Department of Correction and the Department of Community Correction within the constraints of law applicable to judicial transfer, subject to the policies, rules, and regulations established by the Board of Corrections, and conditions set by the Parole Board.

(4) The Department of Correction shall retain legal custody of all inmates transferred to community correction unless altered by court order.

(c)(1) When a prisoner is committed to the Department of Correction,

his or her commitment papers must include a report on the circumstances attending the offense, particularly such circumstances as tend to aggravate or extenuate the offense, which report shall be kept in the permanent file of such prisoner.

(2) The report shall be prepared by the prosecutor or deputy prosecutor who represented the state in the proceeding against the prisoner. The report shall be approved by the sentencing judge.

(d)(1) It shall be the duty of the Department of Correction to transport all inmates committed to the Department of Correction to their respective institutions.

(2) It shall be the duty of every county sheriff within the State of Arkansas to notify the director of the number of persons in his or her charge who are under commitment to the Department of Correction, and it shall be the duty of the director to send for, take charge of, and safely transport, free of charge, the convicted persons to the assigned institution of the Department of Correction as determined by the director.

(3) However, if the county sheriff of any county, in his or her discretion, determines it would be in the best interest of the prisoner and the public to immediately transport the convicted person to the Department of Correction, the county sheriff may transport the person, and the county sheriff shall be entitled therefor to the fees provided by law.

(e)(1) The director shall make and preserve a full and complete record of each and every person committed to the Department of Correction, along with a photograph of the person and data pertaining to his or her trial conviction and past history.

(2)(A) To protect the integrity of those records and to ensure their proper use, it shall be unlawful to permit inspection of or disclose information contained in those records or to copy or issue a copy of all or part of any record except as authorized by administrative regulation or by order of a court of competent jurisdiction.

(B) The regulations shall provide for adequate standards of security and confidentiality of those records.

(3) For those inmates committed to the Department of Correction and judicially transferred to the Department of Community Correction, the preparation of this record may be delegated to the Department of Community Correction pursuant to policies applicable to records transmission adopted by the Board of Corrections.

(4) Administrative regulations may authorize the disclosure of information contained in such records for research purposes.

History. Acts 1933, No. 30, § 13; Pope's Dig., § 12658; Acts 1968 (1st Ex. Sess.), No. 50, §§ 6, 19, 38; A.S.A. 1947, §§ 46-106 — 46-106.2, 46-135; Acts 1989, No. 897, § 1; 1993, No. 549, § 6; 2001, No. 615, § 1.

Cross References. Use of county jail fund for supervision and transportation of inmates, § 12-41-716.

CASE NOTES

ANALYSIS

Inspection or Disclosure of Records.
Transfer.

Inspection or Disclosure of Records.

Disclosure of inmate records is only permissible when authorized by administrative regulation or by order of a court of competent jurisdiction. *Furman v. Holloway*, 312 Ark. 378, 849 S.W.2d 520 (1993).

A court of competent jurisdiction can order disclosure of an inmate's records, and the inmate need not establish a "particularized need" for the information requested. *Furman v. Holloway*, 312 Ark. 378, 849 S.W.2d 520 (1993).

Restrictions on an inmate's inspection of his records, allowing only one inspection per six-month period and authorizing the Department of Correction to remove from the inmate's file any documents it deemed to be of a sensitive or confidential nature and which would cause great harm

to third persons if disclosed to the inmate or any other member of the public, were permissible under this section and reasonable. *Furman v. Holloway*, 312 Ark. 378, 849 S.W.2d 520 (1993).

An administrative directive pertaining to the disclosure of inmate records was not a regulation establishing an exemption as contemplated by subdivision (e)(2) of this section since such directive had not been adopted by the board and was not registered with the Secretary of State. *Orsini v. State*, 340 Ark. 665, 13 S.W.3d 167 (2000).

Transfer.

Inmate not denied due process when he was transferred to a maximum security prison as he had no justifiable expectation that he would be incarcerated in any particular prison within Arkansas. *Whittington v. Norris*, 602 F. Supp. 954 (E.D. Ark. 1984).

Cited: *Pennington v. State*, 260 Ark. 844, 545 S.W.2d 72 (1977).

12-27-114. Inmates in county jails — Reimbursement of county — Medical care.

(a)(1)(A)(i) In the event the Department of Correction cannot accept inmates from county jails due to insufficient bed space, the Department of Correction shall reimburse the counties from the County Jail Reimbursement Fund at rates determined by the Chief Fiscal Officer of the State, after consultation with the Division of Legislative Audit and the Department of Correction and upon approval by the Governor, until the appropriation and funding provided for that purpose are exhausted.

(ii) The reimbursement rate shall include the county's cost of transporting the inmates to the Department of Correction.

(B)(i) Reimbursement shall begin on the date of sentencing if the judgment and commitment order is received by the Department of Correction not later than twenty-one (21) days from the sentencing date.

(ii) If the judgment and commitment order is received by the Department of Correction twenty-two (22) or more days after the sentencing date, reimbursement shall begin on the date the Department of Correction receives the judgment and commitment order.

(2)(A) In the event the Department of Community Correction cannot accept inmates from county jails due to insufficient bed space or shall have an inmate confined in a county jail under any prerelease

program, the Department of Community Correction shall reimburse the counties from the fund at rates determined by the Chief Fiscal Officer of the State, after consultation with the division and the Department of Correction, and upon approval by the Governor, until the appropriation and funding provided for that purpose are exhausted.

(B)(i) Reimbursement shall begin on either the date of sentencing or the date of placement on probation accompanied with incarceration in the Department of Community Correction if the judgment and commitment order or the judgment and disposition order, whichever is applicable, is received by the Department of Community Correction not later than twenty-one (21) days from either the date of sentencing or the date of placement on probation accompanied with incarceration in the Department of Community Correction.

(ii) If the judgment and commitment order or the judgment and disposition order, whichever is applicable, is received by the Department of Community Correction twenty-two (22) or more days after the date of sentencing or the date of placement on probation accompanied with incarceration in the Department of Community Correction, reimbursement shall begin on the date the Department of Community Correction receives either the judgment and commitment order or the judgment and disposition order, whichever is applicable.

(b)(1)(A) In the first week of each month, the Department of Correction and the Department of Community Correction shall prepare an invoice for each inmate received from a county during the previous month.

(B) The invoice shall reflect the number of days an inmate was in the county jail in an awaiting-bed-space status.

(2)(A) The Department of Correction and the Department of Community Correction shall verify and forward the invoices to the applicable county sheriff to certify the actual number of days the state inmates were physically housed in the county jail.

(B)(i) Upon written request of a county judge, county treasurer, or county sheriff, the Department of Correction and the Department of Community Correction shall provide to the county official making the request of a written report summarizing the year-to-date county jail reimbursement invoices prepared and forwarded for verification by the Department of Correction and the Department of Community Correction and payment from the fund.

(ii) In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any balances owed.

(3) The certified invoices shall then be returned to the Department of Correction and the Department of Community Correction for payment from the fund.

(4) The county sheriff shall maintain documentation for three (3)

calendar years to confirm the number of days each inmate was housed in the county jail.

(5) The documentation maintained by the county sheriff is subject to review by the division.

(c)(1) The Board of Corrections shall adopt regulations by which the Department of Correction or the Department of Community Correction may reimburse any county, which is required to retain an inmate awaiting delivery to the custody of either the Department of Correction or the Department of Community Correction for more than thirty (30) days, for the actual costs paid for any emergency medical care for physical injury or illness of the inmate retained under this section if the injury or illness is directly related to the incarceration and the county is required by law to provide the care for inmates in the jail.

(2) The Director of the Department of Correction or his or her designee or the Director of the Department of Community Correction or his or her designee may accept custody of any inmate as soon as possible upon request of the county upon determining that the inmate is required to have extended medical care.

History. Acts 1985, No. 648, § 19; 1991, No. 329, §§ 2, 3; 1991, No. 574, §§ 2, 3; 1991, No. 644, § 3; 1995, No. 316, § 13; 2003, No. 370, § 1; 2003 (2nd Ex. Sess.), No. 16, § 1; 2005, No. 2192, § 1.

A.C.R.C. Notes. Acts 2009, No. 1389, § 19, provided: "COUNTY JAIL INVOICE SUMMARY. The Departments of Correction and Community Correction, shall at a minimum and on a fiscal year basis, prepare and post on the applicable agency web site, a monthly summary of county jail reimbursement invoices prepared and forwarded to each county sher-

iff for verification by the Departments and for payment from the County Jail Reimbursement Fund. In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any balances owed. Each fiscal year-end report shall be maintained on the web sites for a period of no less than three (3) years."

Amendments. The 2005 amendment redesignated former (b)(2) as present (b)(2)(A); and added (b)(2)(B).

12-27-115. Claims of counties for expenses — Verification.

(a) When any county in which an institution of the Department of Correction is located shall incur expenses in connection with any legal proceedings involved or occasioned by any inmate of a penal institution, the county shall be entitled to reimbursement for such expenses from the Department of Correction Fund.

(b) All claims by counties against the fund pursuant to this section shall be itemized, and the claims shall be verified by the county judge and presented to the Director of the Department of Correction within ninety (90) days after the expense is incurred.

(c) Upon receipt of the verified claims, the director shall pay the claim from funds appropriated for the maintenance and operation of the department.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 43; 1981, No. 58, § 4; A.S.A. 1947, § 46-162.

12-27-116. Use of fuel and provisions — Issuance or sale of items produced.

(a) Except as authorized by the Board of Corrections, no officer of the Department of Correction or employee of the department shall give to anyone any fuel, forage, provisions, or manufactured articles under his or her charge, nor permit such things to be taken or used except for the use and benefit of the state.

(b)(1) The department shall adopt rules and regulations to establish a program to provide for the orderly and equitable issuance or sale of surplus items produced or processed by the farming operations of the department to employees and, in addition, shall implement a monitoring system to guarantee fiscal accountability in that program.

(2) Only those individuals identified as emergency force personnel meeting the following requirements may participate in the issuance of items under this program:

(A) Individuals whose duties require long working hours beyond the normal workday of approximately 8:00 a.m. to 5:00 p.m., and the normal workweek of five (5) days a week;

(B) Individuals required for long working hours, regularly worked weekends, and holidays; or

(C) Individuals on twenty-four-hour call, seven (7) days a week.

(3) Reasonable quantities, as determined by availability after meeting the needs of the inmate population, of items produced or processed by the farming operations of the department or purchased in bulk for processing.

(4) There shall be a twenty-five dollar (\$25.00) per month minimum allowance for commissary items.

(5)(A) Fresh surplus vegetables will be available at the cost of production as determined by the Department of Correction's Farm Accounting Division and Central Office Accounting Division to all nonemergency force employees.

(B) Vegetables will be for the use of the employee and domicile correction's family only.

(C) Only one (1) member of the domicile family will be entitled to the issuance or purchase of vegetables.

(6) The department will implement, maintain, and guarantee accountability of all items so issued to assure fiscal responsibility and total honesty in the program.

History. Acts 1893, No. 76, § 54, p. 121; C. & M. Dig., § 9723; Pope's Dig., § 12754; Acts 1981, No. 139, § 1; A.S.A. 1947, § 46-129; Acts 1989 (1st Ex. Sess.), No. 118, § 33; 2009, No. 283, § 1.

Amendments. The 2009 amendment inserted "or processed" in (b)(1) and twice in (b)(3).

12-27-117. Employees' uniforms.

The Department of Correction is authorized to purchase identifying occupational uniforms for correctional personnel as approved by the Board of Corrections.

History. Acts 1987, No. 953, § 21.

deemed to be superseded by this section.

A.C.R.C. Notes. Former § 12-27-117 which concerned employee's uniforms, is

The former section was derived from Acts 1985, No. 648, § 20.

12-27-118. Employees' children — Transportation to school.

(a)(1) In order to provide adequate educational opportunities for school children of personnel employed at the various institutions of the Department of Correction, in those instances in which an institution includes territory in more than one (1) school district, school children living within the boundaries of the institution may attend schools in the district of their choice.

(2) The school district in which the children choose to attend may provide transportation services and all other services normally provided school children of the district.

(b) The authority granted in this section for a school district to transport children living within territory of an institution shall supersede any existing provision of law to the contrary.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 41; A.S.A. 1947, § 46-126.

12-27-119. [Repealed.]

Publisher's Notes. This section, concerning exemptions of prison officials and employees from jury and other duties, was repealed by Acts 1997, No. 484, § 1. The

section was derived from Acts 1893, No. 76, § 47, p. 121; C. & M. Dig., § 9725; Pope's Dig., § 12756; A.S.A. 1947, § 46-124.

12-27-120. Retirement of employees.

(a) During their employment by the Department of Correction, all employees of the state penitentiary on March 1, 1968, shall be eligible for benefits under and shall participate in the Arkansas Public Employees' Retirement System.

(b) All employees of the department employed after March 1, 1968, shall be included in the membership of the Arkansas Public Employees' Retirement System and shall participate in the Arkansas Public Employees' Retirement System in accordance with the laws governing the Arkansas Public Employees' Retirement System.

(c) It is the intent of this section to:

(1) Allow those employees of the state penitentiary who participated before in the Arkansas State Penitentiary Employees' Retirement System to participate in and receive benefits from the Arkansas Public Employees' Retirement System; and

(2) Provide that all other employees of the department shall participate in and receive the benefits of the Arkansas Public Employees' Retirement System in the manner provided by law.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 21; A.S.A. 1947, § 46-125; Acts 2005, No. 1962, § 46.

A.C.R.C. Notes. The Arkansas State Penitentiary Employees' Retirement System was abolished and all of its assets transferred to the Arkansas State Employees Retirement System [now Arkansas Public Employees' Retirement System] by Acts 1965 (2nd Ex. Sess.), No. 12, § 6. The Arkansas State Penitentiary Employees' Retirement System was created by Acts 1957, No. 64, § 1.

Amendments. The 2005 amendment

substituted "Arkansas Public Employees' Retirement System" for "Arkansas State Penitentiary Employees' Retirement System" throughout this section; in (c), inserted the subdivision (1) and (2) designations, substituted "Allow" for "continue to make available to," deleted "opportunity to continue" preceding "to participate," and substituted "and" for "but" at the end of (c)(1); and made stylistic and punctuation changes throughout this section.

Cross References. Arkansas Public Employees' Retirement System, § 24-4-101 et seq.

12-27-121. Transfer of inmates to foreign countries.

The Governor is empowered to authorize the Department of Correction to participate, with the assistance of federal authorities, in any treaty between the United States and a foreign country for the transfer of inmates from the custody of the department to the proper authorities of a foreign country.

History. Acts 1987, No. 775, § 1.

12-27-122. Debt service accounts.

(a)(1) The Department of Correction is authorized to establish accounts in financial institutions other than the State Treasury for the purpose of making debt service payments on bonds issued, or leases, or both, through the Arkansas Development Finance Authority and as otherwise authorized by law.

(2) The accounts shall be entitled the "Construction Fund Deficiency Account", the "Prisoner Housing Contract Account", and the "Regional Facilities Operations Account".

(3) Receipts into the accounts so established shall be from transfers from the work-release cash funds, payments to the department for housing county and city prisoners in regional facilities, and such other sources as required.

(b) Payments made by the department from the work-release cash funds, Construction Fund Deficiency Account, Prisoner Housing Contract Account, and the Regional Facilities Operations Account which are made for bonded indebtedness or leases of regional correction facilities, or both, are specifically exempt from the provisions of §§ 19-4-801 — 19-4-803, 19-4-804 [repealed], 19-4-805, and 19-4-806.

History. Acts 1989, No. 819, §§ 1, 2.

12-27-123. Supervision and transfer of employees.

(a) All staff, employees, and other personnel of the Department of Correction shall be under the direct supervision and control of the Director of the Department of Correction, who shall report directly to the Board of Corrections.

(b) The Compliance Division, which consists of but is not limited to a compliance attorney and an auditor, shall be under the direct authority of the board.

History. Acts 1991, No. 1078, §§ 28, § 29, provided that the auditor referenced in subsection (b) is authorized as an Accounting Supervisor II position.

A.C.R.C. Notes. Acts 1991, No. 1078,

12-27-124. Purposes and construction of the Department of Community Correction.

(a)(1) The purpose of this act is to establish a Department of Community Correction that shall assume the management of all community correction facilities and services, execute the orders of the criminal courts of the State of Arkansas, and provide for the supervision, treatment, rehabilitation, and restoration of adult offenders as useful law-abiding citizens within the community.

(2) The department shall be under the supervision and control of the Board of Corrections.

(3) To accomplish the objectives and purposes of this act in an effective, coordinated, and uniform manner, the department shall be responsible for the administration of all community correction facilities, services, and means of supervision, including probation and parole or any type of post prison release or transfer.

(4) Facilities and services shall be diversified in program, construction, and staff to provide effectually and efficiently for the maximum care, supervision, and treatment of those persons accessing the department.

(b) This act shall be liberally construed so as to effectuate its purposes.

History. Acts 1993, No. 549, § 7.

Publisher's Notes. Acts 1993, No. 549, § 7, provided, in part, that the Board of Correction and Community Punishment shall succeed to all powers, functions, and duties formerly vested in the State Penitentiary Board and the Arkansas Adult Probation Commission. The Department of Community Punishment shall be cre-

ated effective July 1, 1993, the same date that the Board of Correction and Community Punishment assumes its new duties and responsibilities.

Meaning of "this act". Acts 1993, No. 549, codified as §§ 12-27-101, 12-27-103 — 12-27-105, 12-27-107, 12-27-113, 12-27-124 — 12-27-127, 16-93-402.

12-27-125. Department of Community Correction — Creation — Powers and duties.

(a) There is established, under the supervision, control, and direction of the Board of Corrections, a Department of Community Correction.

(b) The Department of Community Correction shall have the following functions, powers, and duties, administered in accordance with the policies, rules, and regulations promulgated by the Board of Corrections:

(1) It shall assume management and control over all properties, both real and personal, facilities, books, records, equipment, supplies, materials, contracts, funds, moneys, equities, and all other properties belonging to the Arkansas Adult Probation Commission [abolished], and all such properties deemed appropriate for transfer from the Department of Correction by the Board of Corrections;

(2)(A) It shall have management and control over all community punishment services existing on July 1, 1993, and created thereafter.

(B) It shall have management and control over all community correction facilities within the purview of the Board of Corrections existing on or created after July 1, 1993;

(3) It shall employ such officers, employees, and agents and shall secure such offices and quarters as deemed necessary to discharge the functions of the Department of Community Correction, and which are appropriately funded;

(4) It may establish and operate regional community correction facilities if funds for the regional community correction facilities have been authorized and appropriated by the General Assembly;

(5)(A) It may exercise all legally sanctioned supervision and appropriate care over all offenders referred with proper documentation from the circuit courts and all offenders transferred with proper documentation from the Department of Correction pursuant to policies established by the Board of Corrections and conditions set by the Parole Board.

(B) Legal custody remains with the referring court or the Department of Correction;

(6) It shall administer the provision of probation services for offenders processed through circuit courts;

(7) It shall administer the provision of parole services in coordination with the Parole Board and in cooperation with the Department of Correction;

(8) It shall provide support services to the Parole Board or its designated representatives as determined by the Parole Board;

(9) It shall assist the Board of Corrections in the furtherance of its goals by staffing the specific charges articulated for it through legislation and by the Board of Corrections;

(10) It shall conduct statewide public education and training to foster the provision of correctional supervision and service in community settings;

(11) It shall provide technical assistance when necessary to any entity, program, division, or agency receiving assistance or clients through the Department of Community Correction;

(12) It shall facilitate the development of a comprehensive community correction plan through the provision of funding, criteria review,

and ongoing evaluation to ensure the maintenance of quality in supervision and programming;

(13) It may accept gifts, grants, and funds from both public and private sources with prior approval of the Board of Corrections;

(14) It shall establish minimum standards for case loads, programs, facilities, and equipment and other aspects of the operation of community correction programs and facilities necessary for the provision of adequate and effective supervision and service;

(15) It shall establish minimum standards for the employment of community correction employees;

(16) It shall establish programs of research, evaluation, statistics, audit, and planning, including studies and evaluation of the performance of various functions and activities of the Department of Community Correction and studies affecting the treatment of offenders and information about other programs;

(17)(A) It may receive and disburse moneys ordered to be paid by offenders pursuant to statutory economic sanctions.

(B) It may receive fees to be levied by the courts or authorized by the Board of Corrections for participation in specified programs and to be paid by offenders on community correction.

(C) The payment of such sanctions and fees may be a condition of probation, parole, or post prison transfer or attached to admission and participation in a community correction program.

(D) The moneys collected shall be deposited into an earmarked account at the state level to be used solely for the continuation and expansion of community correction in this state.

(E) Economic sanction officers are to be authorized by the Department of Community Correction to perform these duties pursuant to policies and procedures adopted by the Board of Corrections and in accord with any state statutory accounting requirements;

(18) It may cooperate and contract with the federal government, with governmental agencies of Arkansas and other states, with political subdivisions of Arkansas, and with private contractors to provide and improve community correction options;

(19) It may inspect and evaluate any community correction site and conduct audits of financial and service records at any reasonable time to determine compliance with the Board of Corrections' rules, regulations, and standards;

(20)(A) It shall maintain a full and complete record of each offender under its supervision.

(B)(i) To protect the integrity of a record described in subdivision (b)(20)(A) of this section and to ensure its proper use, it is unlawful to permit inspection of or disclose information contained in a record described in subdivision (b)(20)(A) of this section or to copy or issue a copy of any part of the record except as authorized by administrative regulation or by order of a court of competent jurisdiction.

(ii) The regulations shall provide for adequate standards of security and confidentiality of a record described in subdivision (b)(20)(A) of this section; and

(21) Subject to availability of funds, it shall employ officers, employees, and agents and secure sufficient offices for monitoring each sex offender on parole or probation who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who has been assessed as a risk level 3 or level 4 offender.

History. Acts 1993, No. 549, § 7; 1997, No. 280, § 1; 2006 (1st Ex. Sess.), No. 4, § 8.

A.C.R.C. Notes. The Arkansas Adult Probation Commission was merged with the Board of Correction to become the Board of Correction and Community Punishment by Acts 1993, No. 549, § 3.

Acts 2001, No. 323, § 1, provided: "Legislative intent. The General Assembly, in Act 549 of 1993, established the Arkansas Department of Community Punishment and delineated its purposes. Confusion in the public's perception, with regard to the purposes of the department, exists and will persist because of the inconsistency between the name of the department and

its established purposes. The purpose of this act is to provide the department with a name that more accurately describes its role as an agency that is intended to fulfill the legislatively established purposes of supervision, treatment, rehabilitation, and restoration of adult offenders as useful law-abiding citizens within the community and to provide its supervisory board with a name consistent with the department's name change."

Acts 2001, No. 323, § 2, provided: "The 'Department of Community Punishment', as established in Arkansas Code 12-27-125, shall hereafter be known as the 'Department of Community Correction'."

12-27-126. Director.

(a) The Director of the Department of Community Correction shall be appointed by the Board of Corrections at a salary fixed by the Board of Corrections, which shall not exceed the maximum salary for the position established by law.

(b) The director shall be qualified for the position by character, ability, education, training, and successful administrative experience in correctional, community correction, or related fields.

(c) The director shall serve at the pleasure of the Board of Corrections.

(d) Subject to the rules, regulations, policies, and procedures prescribed by the Board of Corrections, the director shall:

(1) Administer the Department of Community Correction and supervise the administration of all facilities, programs, and services under the Department of Community Correction's jurisdiction;

(2) Employ such personnel as are required in the administration of the provisions of this act, provided that the employment of personnel shall be in accordance with the applicable laws and personnel regulations of the state;

(3) Institute programs for the training and development of personnel within the Department of Community Correction and have authority to suspend, discharge, or otherwise discipline personnel in accordance with policies prescribed by the Board of Corrections;

(4) Make an annual report to the Board of Corrections, which will be forwarded to the Governor and the General Assembly, on the work of the Department of Community Correction, including statistics and other data, income derived from fee collection, a summary of expendi-

tures of the Department of Community Correction, and progress reports regarding internal issues such as offender success, programming development, bed space utilization, and future needs; and

(5) Cooperate with the Department of Correction, the Parole Board, the Arkansas Sentencing Commission, judicial districts, counties, and municipalities to provide the guidance and services required to ensure a full range of correctional and community correction options for the state as a whole.

History. Acts 1993, No. 549, § 7.

A.C.R.C. Notes. Acts 1993, No. 953, § 13, provided: "Notwithstanding any other provision of law, the Governor shall initially appoint the Director of the Department of Community Punishment af-

ter which the Board of Correction and Community Punishment shall appoint the Director of the Department with the advice of the Governor."

Meaning of "this act". See note to § 12-27-124.

12-27-127. Judicial transfer to the Department of Community Correction.

(a) All commitments must specify that the inmate is to be judicially transferred to the Department of Community Correction pursuant to § 16-93-1206(b)(3) or the commitment will be treated as a commitment to the Department of Correction and subject to regular transfer eligibility.

(b)(1) In accordance with rules, procedures, and regulations promulgated by the Board of Corrections and the orders of the committing court, the Director of the Department of Community Correction shall assign a newly transferred inmate to an appropriate facility, placement, program, or status within the Department of Community Correction.

(2) The director may transfer an inmate from one (1) facility, placement, program, or status to another consistent with the commitment, applicable law, and in accordance with treatment, training, and security needs.

(3)(A) An inmate may be administratively transferred back to the Department of Correction from the Department of Community Correction by the Parole Board following a hearing in which the inmate is found ineligible for placement in a Department of Community Correction facility as he or she fails to meet the criteria or standards established by law or policy adopted by the Board of Corrections or has been found guilty of a violation of the rules and regulations of the facility.

(B) Time served in a community correction facility or under supervision by the Department of Community Correction shall be credited against the sentence contained in the commitment to the Department of Correction.

(c)(1) In accordance with rules and procedures promulgated by the Board of Corrections, upon receipt of a referral from the director or his or her designee, the Parole Board may release from confinement an inmate who has been:

(A) Sentenced and judicially transferred to the Department of Community Correction;

(B) Incarcerated for a minimum of two hundred seventy (270) days; and

(C) Determined by the Department of Community Correction to have successfully completed its therapeutic program.

(2)(A) The General Assembly finds that the power granted to the Parole Board under subdivision (c)(1) of this section will:

(i) Aid the therapeutic rehabilitation of the inmates judicially transferred to the Department of Community Correction; and

(ii) More efficiently use the correctional resources of the State of Arkansas.

(B) The power granted to the Parole Board under subdivision (c)(1) of this section shall be the sole authority required for the accomplishment of the purposes set forth in this subdivision (c)(2), and when the Parole Board exercises its power under this section, it shall not be necessary for the Parole Board to comply with general provisions of other laws dealing with the minimum time constraints as applied to release eligibility.

(3) Nothing in this subsection (c) shall be construed as granting the Parole Board or the Department of Community Correction the authority either to detain an inmate beyond the sentence imposed upon him or her by a transferring court or to shorten that sentence.

History. Acts 1993, No. 549, § 8; 1995, No. 1170, § 5; 2005, No. 682, § 1.

Amendments. The 2005 amendment added (c).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Management, and Military Affairs, 28 U. Legislation, 2005 Arkansas General Assembly, Law Enforcement, Emergency Ark. Little Rock L. Rev. 365.

12-27-128. Department of Correction Nontax Revenue Receipts Fund.

(a) There is created in accordance with §§ 19-4-801 — 19-4-803, 19-4-804 [repealed], 19-4-805, 19-4-806 and § 19-6-101 et seq. a cash fund entitled the Department of Correction Nontax Revenue Receipts Fund to consist of receipts for telephone calls from coinless telephones located on Department of Correction grounds, and from other nontax receipts not previously identified to a fund of deposit.

(b) Funds held in this special fund are to be administered and expended by the Director of the Department of Correction within guidelines established by the Board of Corrections for periodic transfers to other department funds or for disbursements in support of department operations or debt service.

(c) The department will request cash fund appropriations in accordance with established law and procedures after a determination by the board of the usage of this fund.

History. Acts 1993, No. 697, §§ 1-3.

12-27-129. Report on rehabilitation.

(a) The Department of Correction may report to the House Committee on State Agencies and Governmental Affairs and the Senate Committee on State Agencies and Governmental Affairs no later than December 1 of each year regarding its efforts in rehabilitating the inmate population.

(b)(1) The report may include the department's rehabilitative efforts regarding inmate education, specific job training, behavior modification, psychological treatment and assistance, and substance abuse programs.

(2) Further, the report is to include the amount of meritorious good time awarded inmates by the department for the successful completion of the various rehabilitative programs.

History. Acts 1993, No. 911, § 32;
1997, No. 324, § 1.

12-27-130. Reimbursement of county.

Notwithstanding any other provision of law or Department of Correction's commitment which may exist to the contrary, the Board of Corrections shall not increase any reimbursement rate for payments made to any county for the purpose of reimbursing the expenses of the care and custody of state inmates without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

History. Acts 1993, No. 911, § 19;
1995, No. 158, § 13.

12-27-131. Receipts for reimbursement.

(a) Receipts from cities or counties reimbursed to the Department of Correction for daily care of city or county prisoners shall be accounted for separately.

(b) The debt service of such receipts shall be used for payment of debt service on bonds, loans, or any other instruments used to finance regional jail facilities.

(c) The operational portion of such receipts shall also be used for debt service unless approval is received from the Director of the Department of Finance and Administration for other usages.

History. Acts 1993, No. 911, § 30.

12-27-132. Award of pistol upon retirement.

When a Department of Community Correction parole or probation officer retires from service or dies while still employed with the department, in recognition of and appreciation for the service of the retiring or deceased parole or probation officer, the department may

award the pistol carried by the officer at the time of his or her death or retirement from service to:

- (1) The parole or probation officer; or
- (2) The parole or probation officer's spouse if the spouse is eligible under applicable state and federal laws to possess a firearm.

Acts 2009, No. 365, § 1.

12-27-133. Community Correction Revolving Fund.

There is created and established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Community Correction Revolving Fund", which shall consist of those special revenues as specified in § 19-6-301(31) and fees and sanctions levied by the courts or authorized by the Board of Corrections for participation in specified programs to be paid by offenders on community correction, there to be used for continuation and expansion of community correction programs as established and approved by the board and as may be provided by law.

History. Acts 1993, No. 953, § 5.

A.C.R.C. Notes. Acts 1993, No. 953, § 5, provided, in part: "Any fund balances of the Arkansas Adult Probation Commission Fund and the Community Services Revolving Fund on June 30, 1993 shall be transferred to the Community Punishment Revolving Fund."

Acts 2001, No. 323, § 4, provided: "The 'Community Punishment Revolving Fund', as established in Arkansas Code 12-27-133 and 19-6-432, shall hereafter be known as the 'Community Correction Revolving Fund'."

Publisher's Notes. Acts 1993, No. 953, § 5, is also codified as § 19-6-432.

12-27-134. Probation services.

(a) The Department of Community Correction shall administer, in cooperation with the circuit courts, the provision of probation services as prescribed by the circuit courts.

(b) The department shall establish an acceptable procedure that ensures the selection of qualified applicants to meet the needs of the circuit courts and includes subject matter experts from the circuit courts.

History. Acts 1993, No. 953, § 14.

A.C.R.C. Notes. As originally enacted by Acts 1993, No. 953, § 14, this section also provided, in part: "Any existing employee of an Arkansas circuit court adult probation department whose salary is paid in whole or part with State aid (probation supervision fees and/or financial aid regulated or funded by the Arkansas Adult Probation Commission) who is employed with an Arkansas circuit court adult probation department on June 30,

1993, shall be deemed a State employee for all purposes, and therefore shall enjoy the same benefits as regular State employees. An Arkansas circuit court adult probation department employee who becomes a State employee on July 1, 1993, who was employed at any time between April 1, 1984 and June 30, 1993, is entitled to credited service in the former position for the purposes of establishing eligibility for the same benefits as regular state employees."

12-27-135. Facility assignment.

(a)(1) In accordance with the rules, procedures, and regulations promulgated by the Board of Corrections, the Director of the Department of Correction shall assign a newly committed inmate to an appropriate facility of the Department of Correction.

(2) The director may transfer an inmate from one (1) facility to another consistent with the commitment and in accordance with treatment, training, and security needs.

(b) All commitments to the department shall be to the department and not to a particular institution.

History. Acts 1993, No. 658, § 1.

12-27-136. Services and equipment.

The Department of Correction and the Department of Community Correction may provide services, furnishings, equipment, and office space to assist the Parole Board in fulfilling the purposes for which the board was created by law.

History. Acts 1995, No. 195, § 3.

A.C.R.C. Notes. Acts 2003, No. 456, § 3, provided: "The Department of Correction and the Department of Community Correction may provide services, furnishings, equipment and office space to assist the Post Prison Transfer Board in fulfill-

ing the purposes for which the Board was created by law. The provisions of this section shall be in effect only from July 1, 2003 through June 30, 2005."

Publisher's Notes. Acts 1995, No. 195, § 3, is also codified as § 16-93-208.

12-27-137. Confidentiality of emergency preparedness documents.

(a) The following sections of the Department of Correction's official Emergency Preparedness Manual are confidential and shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.:

- (1) Command Post Checklist;
- (2) Command Notifications;
- (3) Internal Notifications;
- (4) External Notifications;
- (5) Recall Notifications;
- (6) Family Notifications;
- (7) Tactical Systems;
- (8) Command Structure;
- (9) Emergency Locations;
- (10) Emergency Equipment;
- (11) Emergency Deactivation;
- (12) Emergency Plans;
- (13) Work Stoppage Directive;
- (14) Evacuation Diagrams; and
- (15) Facility Maps, Utility Locations.

(b) Any document described in subsection (a) of this section shall become available for public viewing if it becomes part of a criminal investigation, at the time that investigation is concluded and it is not otherwise exempt by law.

(c) Any amendments or additions to the sections of the manual described in subsection (a) of this section shall be reviewed annually by the Charitable, Penal and Correctional Institutions Subcommittee of the Legislative Council.

History. Acts 1997, No. 741, § 1.

12-27-138. [Repealed.]

Publisher's Notes. This section, concerning reallocation of resources, was repealed by Acts 2007, No. 1291, § 24. The section was derived from Acts 1999, No. 1142, § 8; 2003, No. 370, § 2.

12-27-139. Notice to police when furloughed inmate will be in jurisdiction.

(a) The Board of Corrections may promulgate rules and regulations to allow inmates to participate in a meritorious furlough program which include a requirement that the county sheriff and the chief of police of the city or town, if applicable, shall be notified if an inmate will be present within their jurisdiction while on furlough.

(b) The rules and regulations referred to in subsection (a) of this section shall not require the county sheriff or the chief of police of the city or town, if applicable, of the jurisdiction in which an inmate will be present on furlough to approve the granting of the furlough.

(c)(1) All Arkansas-certified law enforcement officers are authorized to escort inmates on emergency furlough.

(2) The board may promulgate rules and regulations necessary to implement subdivision (c)(1) of this section.

History. Acts 2001, No. 1371, § 1.

12-27-140. Department of Community Correction Annual Report.

(a)(1) On July 31 of each year, the Department of Community Correction shall submit an annual report to the Legislative Council showing the number of persons sentenced or transferred to the department during the fiscal year for each criminal offense classification.

(2) Persons sentenced or transferred for multiple offenses shall be noted in the report.

(b) The report shall include a breakdown by race of all persons charged in each criminal offense classification.

(c) The department shall cooperate with and upon request make

presentations and provide various reports, to the extent the department's budget will allow, to the Legislative Council concerning department policy and criteria on discretionary offender programs and services.

History. Acts 2003, No. 1031, § 4; 2005, No. 1962, § 47.

A.C.R.C. Notes. Acts 2003, No. 1031, § 1, provided: "Intent.

"(a) Ethnic minorities appear to be over represented in the population of persons who are involved in the criminal justice system, charged as defendants, convicted, and incarcerated throughout the United States criminal justice systems.

"(b) It is the responsibility of criminal justice agencies and the courts in the State of Arkansas to ensure that all actions taken are based upon reasons other than the race of the defendant.

"(c) In order to allow the General Assembly to conduct a thorough review of the Arkansas criminal justice process, information on actions taken by criminal justice agencies and the courts must be reported in a timely, uniform, and consistent manner."

As enacted by Acts 2003, No. 1031, § 4, subdivision (a)(1) began: "Beginning July 31, 2003, and on July 31 of each year thereafter,".

Amendments. The 2005 amendment deleted "and the Commission on Disparity in Sentencing" in (a)(1); and deleted "and the commission" in (c).

12-27-141. Department of Correction Annual Report.

(a)(1) On July 31 of each year, the Department of Correction shall submit an annual report to the Legislative Council showing the number of persons sentenced to the department during the fiscal year for each criminal offense classification.

(2) Persons sentenced for multiple offenses shall be noted in the report.

(b) The report shall include a breakdown by race of all persons sentenced in each criminal offense classification.

(c) The department shall cooperate with and upon request make presentations and provide various reports, to the extent the department's budget will allow, to the Legislative Council concerning department policy and criteria on discretionary offender programs and services.

History. Acts 2003, No. 1031, § 5; 2005, No. 1962, § 48.

A.C.R.C. Notes. Acts 2003, No. 1031, § 1, provided: "Intent.

"(a) Ethnic minorities appear to be over represented in the population of persons who are involved in the criminal justice system, charged as defendants, convicted, and incarcerated throughout the United States criminal justice systems.

"(b) It is the responsibility of criminal justice agencies and the courts in the State of Arkansas to ensure that all actions taken are based upon reasons other than the race of the defendant.

"(c) In order to allow the General Assembly to conduct a thorough review of the Arkansas criminal justice process, information on actions taken by criminal justice agencies and the courts must be reported in a timely, uniform, and consistent manner."

As enacted by Acts 2003, No. 1031, § 5, subdivision (a)(1) began: "Beginning July 31, 2003, and on July 31 of each year thereafter,".

Amendments. The 2005 amendment deleted "and the Commission on Disparity in Sentencing" in (a)(1); and deleted "and the commission" in (c).

12-27-142. Medical services contract.

- (a) The Department of Correction and the Department of Community Correction may enter into professional services contracts for medical services for a contract period not to exceed ten (10) years.
- (b) Except as provided in subsection (a) of this section, the professional services contracts for medical services shall comply with all other provisions of the Arkansas Procurement Law, § 19-11-201 et seq., and regulations.
- (c) A medical services contract in existence on August 12, 2005, may be extended to a ten-year contract.

History. Acts 2005, No. 684, § 1. section read "... on the effective date of
A.C.R.C. Notes. As enacted by Acts this section ...".
2005, No. 684, § 1, subsection (c) of this

CHAPTER 28
STATE CORRECTIONAL FACILITIES

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. CUMMINS UNIT. [REPEALED.]
- 3. WOMEN'S UNIT. [REPEALED.]
- 4. TUCKER UNIT. [REPEALED.]
- 5. YOUTHFUL OFFENDERS TREATMENT FACILITY. [REPEALED.]
- 6. PRISON OVERCROWDING EMERGENCY POWERS ACT.
- 7. ARKANSAS BOOT CAMP ACT.

Publisher's Notes. Acts 1968 (1st Ex. Sess.), No. 50, § 44, provided, in part, that all laws relating to the state penitentiary which were not specifically repealed by, or in conflict with, Acts 1968 (1st Ex. Sess.), No. 50 would apply to the Department of Correction.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-28-101. Facilities.
- 12-28-102. Death chamber.
- 12-28-103. Cost impact statements.
- 12-28-104. Paroling authority.

SECTION.

- 12-28-105. Continuity of care for persons released.
- 12-28-106. Electric fencing.

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 50, § 46: Mar. 1, 1968. Emergency clause provided: "The General Assembly finds that the penal system of the State of Arkansas is in need of immediate reform, in order better to effectuate the rehabilitation of persons convicted of crime and to make possible their return as useful members of the community, and that the immediate passage of this act is necessary to establish a Department of Correction to effectuate such rehabilitation. Therefore, an emergency is hereby declared to exist and this act being im-

diately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after March 1, 1968."

Acts 1969, No. 377, § 13: Apr. 9, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that persons under the age of 21 years who are convicted of a felony in this state, must now be committed to the Department of Correction, thereby severely minimizing the opportunities of rehabilitation of such persons, and that immediate steps must be taken to provide for the establishment of an intermediate reformatory wherein educational opportunities for training, education and rehabilitation training may be established for the benefit of such convicted felons. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1977, No. 466, § 6: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Department of Correction is in the process of constructing new facilities and will in the future build others, and that inmates will be classified and sent to units or centers that will be designated by the Board of Correction as to what type or age of inmates each unit or center will house, and that this act is immediately necessary to properly name the various units of the Department of Correction and to permit the proper designation of facilities hereafter constructed by the Department of Correction. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1977."

Acts 1981, No. 107, § 4: Feb. 19, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that Section 7 of Act 377 of 1969 needs immediate amending because of the present requirement of the Department of Correction to transport an inmate to his

former home or to the county in which he was committed; that this is an expensive and unnecessary financial burden on the taxpayers of this state; that all that is needed is for the Department of Correction to transport the inmate to the closest commercial transportation pick-up point. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect after its passage and approval."

Acts 1993, No. 1281, § 7: Apr. 21, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that on occasion the best interest of the releasee and state are served by a short delay in release in cases of mental or medical health cure need and that this act is immediately necessary to permit such delay. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 423, § 5: Mar. 10, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that without cost impact statements on bills which have an impact on prison populations the General Assembly cannot adequately review and debate those bills; the present law does not now require those cost impact statements; that this act will require cost impact statements on those bills and this act should go into effect immediately in order to be applicable to the Eighty-First General Assembly in its regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

12-28-101. Facilities.

(a)(1) The Department of Correction, with the approval of the Board of Corrections, shall provide appropriate incarceration facilities for women, youthful offenders, and other adult offenders committed to the department by the courts of this state.

(2) The department shall also provide education and other rehabilitation and treatment programs designed to prepare inmates committed to the department for productive and law-abiding lives upon release from the department.

(3) The department may contract with state or private entities such as accredited colleges or universities to provide additional educational opportunities for inmates under the direction and authority of the board and the Corrections School System.

(b) Any facility built or occupied by the department for use as a correctional facility shall be given a designated name of "unit" or "center" depending on its size, location, and purpose of usage.

History. Acts 1977, No. 466, § 4; A.S.A. 1947, § 46-100.1; Acts 2001, No. 613, § 1; 2009, No. 788, § 2.

A.C.R.C. Notes. Acts 2009, No. 788, § 1, provided:

"Whereas, Arkansas Code § 12-28-101(a)(2) authorizes the Department of Correction to provide education and other rehabilitation and treatment programs designed to prepare inmates committed to the department for productive and law-abiding lives upon release from the Department of Correction; and

"Whereas, Arkansas Code § 12-29-301 establishes the Department of Corrections School System to provide elementary, secondary, and vocational and technical education to qualified persons incarcerated in the Department of Correction and the Department of Community Correction and qualified persons supervised by the Department of Community Correction; and

"Whereas, Arkansas Code § 12-29-

101(d)(2) provides that inmates in the institutions of the Department of Correction may participate in and benefit from the vocational, educational, and rehabilitation services of their respective institutions solely within the rules and regulations of the department as determined by the director, subject to appeal and review by the Board of Corrections or a designated review board in accordance with procedures that shall be established by the board; and

"Whereas, the Corrections School System along with the Department of Correction and the Department of Community Correction have entered into agreements to provide college courses to qualified persons under Administrative Regulation 500 which are taught onsite by accredited college and universities."

Amendments. The 2009 amendment inserted (a)(3); and added quotation marks around "unit" and "center" in (b).

12-28-102. Death chamber.

(a) The Department of Correction shall provide a death chamber within such facility or institution of the department as may be designated by the Director of the Department of Correction with the approval of the Board of Corrections.

(b) The death chamber shall have all the necessary appliances for the proper execution of felons by electrocution.

(c) All felons upon whom the death penalty has been imposed shall be executed in the death chamber.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 16; A.S.A. 1947, § 46-115.

A.C.R.C. Notes. This section may be affected by Acts 1983, No. 774, § 4, which provided: "All references in the laws of the State of Arkansas relating to execution by

electrocution shall, insofar as such provisions are applicable, apply to, and mean, execution by lethal injection, except as to capital offenses already committed."

Cross References. Method of execution, § 5-4-617.

12-28-103. Cost impact statements.

(a) Each of the following bills introduced in the General Assembly shall have a cost impact statement attached to the bill prior to the committee to which the bill is referred taking action in regard to the bill:

(1) Bills that affect inmate population patterns at facilities of the Department of Correction by imposing restrictions on inmate release or by increased intake into the department of inmates based on felony convictions; and

(2) Bills that affect programs or services of the department.

(b) In addition, copies of the cost impact statement shall be furnished on the desk of each member of the Senate and of the House of Representatives at least one (1) day prior to the date on which the bill is on third reading and debated for final passage in the respective houses.

(c) Cost impact statements required under this section shall be prepared, upon referral thereof by the Speaker of the House of Representatives, with respect to House of Representatives bills, and by the President of the Senate upon recommendation of the Senate Rules, Resolutions and Memorials Committee, with respect to Senate bills, at the time of introduction thereof, to:

(1) The Director of the Department of Correction who shall either personally prepare or cause appropriate officials of the department to prepare, a cost impact statement to be approved by the director before submission to the house in which the request was made; or

(2) Any other state agency that has information available upon which to base a cost impact statement.

(d) The cost impact statement shall be furnished to the Governor and to the President of the Senate and the Speaker of the House of Representatives who shall cause copies thereof to be prepared for distribution upon the desks of the members of the House of Representatives and Senate at least twenty-four (24) hours prior to consideration of any such bill by committee or twenty-four (24) hours prior to the bill's being called up for third reading and final passage.

(e) The cost impact statement shall be certified by the director or the director of the appropriate agency to which the bill is referred for preparation of an impact statement, and shall be returned and filed as required in this section within not more than five (5) days from the date of receipt thereof unless additional time in which to prepare the statement is granted by the requesting official.

History. Acts 1997, No. 423, § 1.

Publisher's Notes. Former § 12-28-103, concerning cost impact statements,

was repealed by Acts 1995, No. 1248, § 1. The former section was derived from Acts 1983, No. 701, § 1; A.S.A. 1947, § 46-182.

12-28-104. Paroling authority.

(a) The Parole Board shall be the paroling authority for the units of the Department of Correction and shall make recommendations to the Governor in cases from the criminal courts that, in the board's opinion, the defendant in the case should be pardoned.

(b) The board shall consider the work skills, education, rehabilitation, and treatment programs recommended to the inmate upon intake and determine whether the inmate took advantage of those opportunities while incarcerated in the department in making decisions regarding parole.

History. Acts 1969, No. 377, § 9; 1981, No. 107, § 2; A.S.A. 1947, § 46-916; Acts 2009, No. 788, § 3.

A.C.R.C. Notes. Acts 2009, No. 788, § 1, provided: "Whereas, Arkansas Code § 12-28-101(a)(2) authorizes the Department of Correction to provide education and other rehabilitation and treatment programs designed to prepare inmates committed to the department for productive and law-abiding lives upon release from the Department of Correction; and

"Whereas, Arkansas Code § 12-29-301 establishes the Department of Corrections School System to provide elementary, secondary, and vocational and technical education to qualified persons incarcerated in the Department of Correction and the Department of Community Correction and qualified persons supervised by the Department of Community Correction; and

"Whereas, Arkansas Code § 12-29-101(d)(2) provides that inmates in the

institutions of the Department of Correction may participate in and benefit from the vocational, educational, and rehabilitation services of their respective institutions solely within the rules and regulations of the department as determined by the director, subject to appeal and review by the Board of Corrections or a designated review board in accordance with procedures that shall be established by the board; and

"Whereas, the Corrections School System along with the Department of Correction and the Department of Community Correction have entered into agreements to provide college courses to qualified persons under Administrative Regulation 500 which are taught onsite by accredited college and universities."

Amendments. The 2009 amendment inserted (b) and redesignated the remaining text accordingly; and in (a), substituted "Parole Board" for "Post Prison Transfer Board" and inserted "the defendant in the case."

12-28-105. Continuity of care for persons released.

(a)(1) Any person incarcerated by the Department of Correction may be permitted to remain within a treatment facility operated by the department, if serious physical or mental disorders or disabilities exist, until release to a similar treatment setting outside of the department can be accomplished.

(2) In no case should the continuation of housing extend beyond a seventy-two-hour period.

(b) The department will adopt rules to govern the housing situations.

History. Acts 1993, No. 1281, §§ 1-3.

12-28-106. Electric fencing.

(a)(1) The Department of Correction may design and install high-voltage electrified security fence systems at all existing and proposed medium and maximum security prisons.

(2) However, at the time of installation there shall be posted universal danger signs on all sides of the system clearly visible to inmates and the public displaying in English and Spanish the warning “deadly voltage”.

(b) The installation of these fence systems shall be double, twelve-foot high, security perimeter fences, with the exception of those locations where a building or wall constitutes a part of the security perimeter.

(c) At institutions where these fences have been installed, the department shall provide perimeter patrol for the safety of the local community.

History. Acts 1997, No. 350, § 1.

SUBCHAPTER 2 — CUMMINS UNIT

SECTION.

12-28-201. [Repealed.]

12-28-201. [Repealed.]

Publisher’s Notes. This subchapter, subchapter was derived from Acts 1977, concerning the Cummins Unit, was repealed by Acts 2001, No. 559, § 1. The No. 466, § 1; A.S.A. 1947, § 46-100.2.

SUBCHAPTER 3 — WOMEN’S UNIT

SECTION.

12-28-301, 12-28-302. [Repealed.]

12-28-301, 12-28-302. [Repealed.]

Publisher’s Notes. This subchapter, 12-28-301. Acts 1951, No. 351, § 1; concerning the Women’s Unit of the Department of Correction, was repealed by A.S.A. 1947, § 46-801. Acts 2001, No. 559, § 2. The subchapter was derived from the following sources: 12-28-302. Acts 1951, No. 351, § 2; A.S.A. 1947, § 46-802.

SUBCHAPTER 4 — TUCKER UNIT

SECTION.

12-28-401 — 12-28-408. [Repealed.]

12-28-401 — 12-28-408. [Repealed.]

Publisher’s Notes. This subchapter §§ 3-6. The subchapter was derived from was repealed by Acts 2001, No. 559, the following sources:

- 12-28-401. Acts 1969, No. 377, § 1; A.S.A. 1947, § 46-908; Acts 1993, No. 658, § 2.
 12-28-402. Acts 1969, No. 377, § 4; A.S.A. 1947, § 46-911.
 12-28-403. Acts 1969, No. 377, § 3; A.S.A. 1947, § 46-910.
 12-28-404. Acts 1969, No. 377, § 10; A.S.A. 1947, § 46-917.
 12-28-405. Acts 1969, No. 377, § 5; A.S.A. 1947, § 46-912.
 12-28-406. Acts 1969, No. 377, § 6; A.S.A. 1947, § 46-913.
 12-28-407. Acts 1969, No. 377, § 4; A.S.A. 1947, § 46-911.
 12-28-408. Acts 1969, No. 377, § 8; A.S.A. 1947, § 46-915.

SUBCHAPTER 5 — YOUTHFUL OFFENDERS TREATMENT FACILITY

SECTION.

12-28-501 — 12-28-507. [Repealed.]

12-28-501 — 12-28-507. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2001, No. 559, § 7. The subchapter was derived from the following sources:

- 12-28-501. Acts 1971, No. 466, § 1; A.S.A. 1947, § 46-1101.
 12-28-502. Acts 1971, No. 466, § 8; A.S.A. 1947, § 46-1108.
 12-28-503. Acts 1971, No. 466, § 3; A.S.A. 1947, § 46-1103.
 12-28-504. Acts 1971, No. 466, §§ 2, 5; 1981, No. 488, § 1; A.S.A. 1947, §§ 46-1102, 46-1105.
 12-28-505. Acts 1971, No. 466, § 4; A.S.A. 1947, § 46-1104.
 12-28-506. Acts 1971, No. 466, § 7; A.S.A. 1947, § 46-1107.
 12-28-507. Acts 1971, No. 466, § 6; A.S.A. 1947, § 46-1106.

SUBCHAPTER 6 — PRISON OVERCROWDING EMERGENCY POWERS ACT

SECTION.

- 12-28-601. Title.
 12-28-602. Definitions.
 12-28-603. Declaration of emergency.
 12-28-604. List of inmates — Early parole or discharge.

SECTION.

- 12-28-605. Successive states of emergency.
 12-28-606. Declaration of end of emergency.

Publisher's Notes. Former subchapter 6, concerning prison overcrowding emergency powers, was repealed by Acts 1987, No. 418, § 7. The former subchapter was derived from Acts 1983, No. 223, §§ 1-7; A.S.A. 1947, §§ 46-1801 — 46-1807.

Cross References. General powers and duties of Department of Correction, § 12-27-101 et seq.

Effective Dates. Acts 1987, No. 418, § 8: Mar. 26, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is serious overcrowding in the Department of Correction facilities and that such overcrowding is likely to worsen unless appropriate action is taken immediately; that

this act is designed to establish a procedure for alleviating this problem and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 684, § 5: Mar. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that at present, the Prison Overcrowding Emergency Powers Act can be invoked by the Board only if the total combined male and female population of the prison system exceeds ninety-eight percent (98%) of the rated capacity; that

male and female facilities are separate and either may become overcrowded while the combined total inmate population of the male and female facilities would not meet the ninety-eight percent capacity requirement of the Prison Overcrowding Emergency Powers Act; that it is urgent that the Board be given authority to invoke the Act when either the male facilities or the female facilities exceeds ninety-eight percent of capacity level; that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2003, No. 1721, § 5: Apr. 22, 2003. Emergency clause provided: “It is found

and determined by the General Assembly of the State of Arkansas that overcrowding in the state prisons must be addressed immediately; that this act does so; and that this act must go into effect as soon as possible in order to help assure that our citizens are protected from the dangerous elements of society. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

CASE NOTES

Cited: Wells v. Walker, 852 F.2d 368 (8th Cir. 1988).

12-28-601. Title.

This subchapter shall be known as the “Prison Overcrowding Emergency Powers Act”.

History. Acts 1987, No. 418, § 1.

12-28-602. Definitions.

As used in this subchapter:

- (1) “Board” means the Board of Corrections;
- (2) “County backlog” means those inmates sentenced to the Department of Correction who are being housed in the county jails until space is available in a prison;
- (3) “Prison” means a correctional facility operated by the department under the supervision and direction of the board;
- (4) “Prison system” means the prison facilities of the department; and
- (5) “Rated capacity” means the actual available bed space in the prison system as certified by the board, subject to applicable federal and state laws and the rules and regulations adopted pursuant to those laws.

History. Acts 1987, No. 418, § 2; 1995, No. 204, § 1; 1995, No. 293, § 1; 2003, No. 1721, § 1.

12-28-603. Declaration of emergency.

(a)(1) Whenever the population of the prison system exceeds ninety-eight percent (98%) of the rated capacity for thirty (30) consecutive days, or whenever the number of inmates on the county jail backlog exceeds five hundred (500) inmates, the Board of Corrections may declare a prison overcrowding state of emergency.

(2) In making any emergency request based on exceeding the ninety-eight-percent capacity, the board shall certify the rated capacity and current population of the prison system and shall further certify that all authorized actions consistent with applicable state laws and regulations have been exhausted in an attempt to reduce the prison population to ninety-eight percent (98%) of the rated capacity.

(3) In making any emergency request based on a county jail backlog exceeding five hundred (500) inmates, the board shall certify the list of persons on the county jail backlog and shall further certify that all authorized actions consistent with applicable state laws and regulations have been exhausted in an attempt to reduce the county jail backlog to five hundred (500) inmates.

(b) Provided all other requirements of this subchapter are met, the board is authorized to invoke this subchapter separately for those facilities housing either male or female inmate populations.

History. Acts 1987, No. 418, § 3; 1991, No. 684, § 1; 1995, No. 204, § 2; 1995, No. 293, § 2; 2003, No. 1721, § 2.

12-28-604. List of inmates — Early parole or discharge.

(a)(1) When the Board of Corrections declares a prison overcrowding state of emergency due to exceeding ninety-eight percent (98%) of the rated capacity and notifies the Director of the Department of Correction of the emergency as authorized, the director shall certify to the board a list of those inmates who are Class I and Class II, and the director shall indicate which inmates he or she recommends for parole, transfer, or discharge.

(2) The listed inmates shall be those who, if authorized, would have their parole eligibility, transfer eligibility, or minimum release dates moved up to a point where they would immediately be eligible for parole, transfer, or discharge.

(3) Upon receipt of the list of inmates certified by the director, the board is authorized to move up the projected parole eligibility, transfer eligibility, or minimum release dates of any or all inmates on the list by up to ninety (90) days.

(4) The board shall certify to the director a list of the names of all prisoners whose projected parole eligibility, transfer eligibility, or

minimum release dates are affected pursuant to the provisions of this subchapter.

(b)(1) When the board declares a prison overcrowding state of emergency due to the county jail backlog exceeding five hundred (500) inmates and notifies the director of the emergency as authorized, the director shall certify to the board a list of those inmates who are in Class I or Class II status who have been incarcerated in a department facility for a minimum of six (6) months and are serving a sentence for a nonviolent offense as established by the board, and the director shall indicate which inmates he or she recommends for parole, transfer, or discharge.

(2) The listed inmates shall be those who, if authorized, would have their parole eligibility, transfer eligibility, or discharge dates moved up to a point where they would immediately be eligible for parole, transfer, or discharge.

(3) Upon the receipt of the list of inmates certified by the director, the board is authorized to move up the projected parole eligibility, transfer eligibility, or discharge dates of any or all inmates on the list by up to one (1) year.

(4) The board shall certify to the director a list of the names of all prisoners whose projected parole eligibility, transfer eligibility, or discharge dates are affected pursuant to the provisions of this subchapter.

History. Acts 1987, No. 418, § 4; 1995, No. 204, § 3; 1995, No. 293, § 3; 2003, No. 1721, § 3.

Cross References. Custody classifications and treatment programs, § 12-29-101.

12-28-605. Successive states of emergency.

(a) The Board of Corrections may declare succeeding prison overcrowding states of emergency at any time when the prison population exceeds ninety-eight percent (98%) of the rated capacity of the system, but these successive states of emergency shall not be declared more often than one (1) time each ninety (90) days or at any time the county jail backlog exceeds five hundred (500) inmates.

(b) Any subsequent state of emergency declared pursuant to the provisions of this subchapter shall have the same effect as the first declaration of emergency with respect to inmates in the system on the date of the declaration of each successive state of emergency.

History. Acts 1987, No. 418, § 5; 1995, No. 204, § 4; 1995, No. 293, § 4; 2003, No. 1721, § 4.

12-28-606. Declaration of end of emergency.

At any time during a declared prison overcrowding state of emergency, the Board of Corrections may declare the prison overcrowding state of emergency to be ended.

History. Acts 1987, No. 418, § 6; 1995, No. 204, § 5; 1995, No. 293, § 5.

SUBCHAPTER 7 — ARKANSAS BOOT CAMP ACT

SECTION.

12-28-701. Title.

12-28-702. Legislative findings and determinations.

12-28-703. Authorization.

SECTION.

12-28-704. Eligibility.

12-28-705. Construction — Applicability of other acts.

12-28-701. Title.

This subchapter shall be referred to and may be cited as the “Arkansas Boot Camp Act”.

History. Acts 1989, No. 492, § 1.

12-28-702. Legislative findings and determinations.

The General Assembly finds that:

(1) The cost of incarcerating the expanding number of offenders in conventional penitentiaries is skyrocketing, bringing added fiscal pressures on the state;

(2) Some inmates may be effectively punished in a more affordable manner through the exposure to severe, military-like conditions; and

(3) The Department of Correction should be given the authority to establish boot camps which will provide a more affordable means of punishing certain inmates who are designated as eligible for this alternative punishment by the department.

History. Acts 1989, No. 492, § 2.

12-28-703. Authorization.

(a) The Board of Corrections shall develop and implement a boot camp program designed to reduce the inmate population by diverting eligible offenders from long-term incarceration.

(b) This diversion shall involve successful completion of, at a minimum, a sixty-day program of intensive behavior modification in an arduous, physically demanding, military-like environment, otherwise known as a “boot camp”.

History. Acts 1989, No. 492, § 3; 1993, No. 582, § 1.

12-28-704. Eligibility.

Appropriate inmates shall be chosen for the boot camp program established by this subchapter in accordance with guidelines to be adopted by the Board of Corrections. These guidelines must include a risk profile system to be used in selecting inmates eligible for assignment to the program.

History. Acts 1989, No. 492, § 4.

12-28-705. Construction — Applicability of other acts.

This subchapter shall be liberally construed to accomplish the intent and purposes of the General Assembly in adopting it and shall be the sole authority required for the accomplishment of these purposes. To this end, it shall not be necessary to comply with general provisions of other laws dealing with the minimum time constraints as applied to release eligibility.

History. Acts 1989, No. 492, § 5.

CHAPTER 29

INMATES OF STATE FACILITIES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. GOOD TIME ALLOWANCE.
3. EDUCATION.
4. MEDICAL CARE.
5. STATE PRISON INMATE CARE AND CUSTODY REIMBURSEMENT ACT.
6. SATISFACTION OF RESTITUTION ORDERS THROUGH DAMAGE AWARDS.

Publisher's Notes. Acts 1933, No. 30, § 37, provided, in part, that laws not inconsistent with, or specifically repealed by, Acts 1933, No. 30 should apply to the Board of Penal Institutions.
Acts 1968 (1st Ex. Sess.), No. 50, § 44,

provided, in part, that all laws relating to the State Penitentiary which were not specifically repealed by, or in conflict with, Acts 1968 (1st Ex. Sess.), No. 50 would apply to the Department of Correction.

RESEARCH REFERENCES

ALR. Sex discrimination in treatment of prisoners. 12 A.L.R.4th 1219.
Right of jailed or imprisoned parent to visit from minor child. 15 A.L.R.4th 1234.

Sufficiency of access to legal research facilities afforded defendant confined in state prison or local jail. 23 A.L.R.4th 590.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-29-101. Custody classifications and treatment programs.
- 12-29-102. Inmates denied participation in furlough programs.
- 12-29-103. Discipline.
- 12-29-104. Contacts with persons outside the institution.

SECTION.

- 12-29-105. Clergy.
- 12-29-106. Mail to or from inmates.
- 12-29-107. Inmate welfare funds.
- 12-29-108. Cash in possession of inmate — Confiscation.
- 12-29-109. Board action upon violations of § 5-54-119.

SECTION.

- 12-29-110. Selling or trading position, working condition, or promotion — Penalty.
- 12-29-111. Transport of inmate required for legal proceeding.
- 12-29-112. Discharge or release.
- 12-29-113. Notice of escape to law enforcement officers — Penalty.

SECTION.

- 12-29-114. Notice of escape to victim or victim's next of kin.
- 12-29-115. Combination to escape — Authority of guards.
- 12-29-116. Authority of director in case of alarm or danger.

Effective Dates. Acts 1887, No. 113, § 5: effective on passage.

Acts 1893, No. 76, § 71: effective on passage.

Acts 1967, No. 474, § 4: Apr. 4, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent investigations of the State Penitentiary have pointed up the need for improved laws to impose stronger penalties on inmates in the penitentiary who violate the laws, rules and regulations governing the penitentiary; that a number of inmates at the penitentiary have been in possession of amounts of cash in excess of the amounts authorized by the regulations of the State Penitentiary Board, and that such amounts of cash have often led to abuses and disorder in the penitentiary, and that immediate passage of this act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 475, § 4: Apr. 4, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent investigations at the State Penitentiary called attention to the need to strengthen the laws of this state to prevent abuses at the penitentiary and to promote discipline and order at the penitentiary; and, that the immediate passage of this act is necessary to impose adequate safeguards against abuses at the penitentiary. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 477, § 4: Apr. 4, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Penitentiary is in the vicinity of Jefferson and Lincoln Counties; that the quick apprehension of escaped convicts before life or property is destroyed requires that the law enforcement officials in these counties be notified immediately of any prison escapes; and that in order to remedy this situation, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1968 (1st Ex. Sess.), No. 50, § 46: Mar. 1, 1968. Emergency clause provided: "The General Assembly finds that the penal system of the State of Arkansas is in need of immediate reform, in order better to effectuate the rehabilitation of persons convicted of crime and to make possible their return as useful members of the community, and the immediate passage of this act is necessary to establish a Department of Correction to effectuate such rehabilitation. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after March 1, 1968."

Acts 1969, No. 377, § 13: Apr. 9, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that persons under the age of 21 years who are convicted of a felony in this state, must now be committed to the Department of Correction, thereby severely minimizing the opportunities of rehabilitation of such persons, and that immedi-

ate steps must be taken to provide for the establishment of an intermediate reformatory wherein educational opportunities for training, education and rehabilitation training may be established for the benefit of such convicted felons. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1975, No. 737, § 3: Apr. 3, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that this act is essential to the operation of the Department of Correction and that in the event of a delay that the proper administration in providing transportation for inmates for court appearances could work irreparable harm on the effectiveness of the courts. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1981, No. 56, § 2: Feb. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the above mentioned act is outdated and unnecessary as more sophisticated methods in law enforcement techniques are now employed by the Department of Correction and law enforcement agencies throughout the state; that the Department of Correction has a solid record of apprehending escaped prisoners in concerted efforts with all Arkansas county and local law enforcement officials; that there is no need to limit the notification of only the sheriffs of Jefferson, Lincoln, and Pulaski Counties and the Police Chief of Little Rock as the above mentioned act calls for. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 58, § 7: approved Feb. 12, 1981. Emergency clause provided: "The General Assembly finds that the penal system of the State of Arkansas is in need of immediate reform, in order to better effectuate the rehabilitation of persons convicted of crimes and to make

possible their return as useful members of the community, and that the immediate passage of this act is necessary to facilitate these reforms. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage."

Acts 1981, No. 59, § 4: Feb. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present custody classification of prisoners is quite ambiguous and difficult to implement; that this act is necessary to correct such deficiency in the law. It is further found and determined by the General Assembly that the present law which requires physicals to be given twice a year is arbitrary and unnecessary and a waste of taxpayer money; that physicals should be given as often as needed as determined by the medical staff of the Department of Correction as this act requires. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force after its passage and approval."

Acts 1981, No. 60, § 3: Feb. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law regarding the furnishing of an inmate with liquor results in a maximum fine of only one hundred dollars (\$100) and up to 10 days in jail; that this law is badly outdated and needs modernization; that such offense is very serious and the consequences could be devastating; that the offense should be reclassified as a Class D felony and should include 'drugs' in the definition. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect after its passage and approval."

Acts 1981, No. 107, § 4: Feb. 19, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that Section 7 of Act 377 of 1969 needs immediate amending because of the present requirement of the Department of Correction to transport an inmate to his former home or to the county in which he was committed; that this is an expensive and unnecessary financial burden on the taxpayers of this State; that all that is

needed is for the Department of Correction to transport the inmate to the closest commercial transportation pick-up point. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect after its passage and approval."

Acts 1983, No. 790, § 3: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that inmates in the Department of Correction, who damage or destroy state property, are not now required to pay restitution to the department for damages to state property; and that the immediate passage of this act is necessary in order to enable the Department of Correction to recover from money available to the inmate, the restitution of damages caused by actions of the acts of an inmate, and the immediate passage of this act is necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 686, § 3: Mar. 27, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the penalties prescribed in the present law are inadequate to deter introduction of prohibited articles in certain facilities; that this act is designed to correct this deficiency and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall

be in full force and effect from and after its passage and approval."

Acts 1988 (4th Ex. Sess.), No. 8, § 4 and No. 23, § 4: July 15, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present provisions do not allow persons incarcerated in the Department of Correction to properly exercise their religious beliefs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1487, § 5: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the law providing that certain inmates should not be eligible to participate in furlough programs does not include persons convicted of murder in the first degree; that it is imperative that persons convicted of murder in the first degree be prevented from participation in such programs because they present a real and present danger to society; and that immediate passage of this act is necessary to protect the public peace, health and safety of the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

12-29-101. Custody classifications and treatment programs.

(a)(1) The Director of the Department of Correction shall formulate and establish a system by which all prisoners delivered to and in the care and custody of the Department of Correction shall be classified according to deportment.

(2) In this classification, consideration shall be given to the prisoner's demeanor while in the department's care and custody and the prisoner's record prior to commitment to the department.

(b) Persons committed to the institutional care of the department shall be dealt with humanely with efforts directed to their rehabilitation.

(c)(1) For these purposes, the department may establish programs of classification and diagnosis, education, casework, counseling and psychiatric therapy, vocational training and guidance, work, library and religious services, and other rehabilitation programs or services as may be indicated.

(2) The department shall also institute procedures for the study and classification of inmates.

(d)(1) With the approval of the Board of Corrections, the director shall establish rules and regulations for the assignment of inmates to the various programs, services, and work activities of the department.

(2) Inmates in the institutions of the department may participate in and benefit from the vocational, educational, and rehabilitation services of their respective institutions solely within the rules and regulations of the department as determined by the director, subject to appeal and review by the Board of Corrections or a designated review board in accordance with procedures that shall be established by the Board of Corrections.

History. Acts 1943, No. 157, § 1; 1968 § 1; 1981, No. 59, § 1; A.S.A. 1947, §§ 46-116 (1st Ex. Sess.), No. 50, § 8; 1981, No. 58, 116, 46-136.

CASE NOTES

Cited: *Finney v. Arkansas Bd. of Cor.*, 505 F.2d 194 (8th Cir. 1974).

12-29-102. Inmates denied participation in furlough programs.

A person who is convicted of any of the following offenses shall be ineligible to participate in any meritorious furlough program conducted by or for the Department of Correction:

- (1) Capital murder, § 5-10-101;
- (2) Murder in the first degree, § 5-10-102;
- (3) Kidnapping, § 5-11-102;
- (4) Rape, § 5-14-103;
- (5) Any other offense concerning sexual offenses under § 5-14-101 et seq.;
- (6) An offense concerning sexual exploitation of children under § 5-27-301 et seq.;
- (7) An offense concerning use of children in sexual performances under § 5-27-401 et seq.; or
- (8) Stalking, § 5-71-229.

History. Acts 1997, No. 1191, § 1; 1999, No. 1487, § 1. repealed by Acts 1993, No. 658, § 2. The former section was derived from Acts 1968

Publisher's Notes. Former § 12-29-102, concerning women inmates, was re- (1st Ex. Sess.), No. 50, § 8; 1981, No. 58, § 1; A.S.A. 1947, § 46-116.

12-29-103. Discipline.

(a) The Director of the Department of Correction or the Director of the Department of Community Correction shall prescribe, with the approval of the Board of Corrections, rules and regulations for the maintenance of good order and discipline in the facilities and institutions of the Department of Correction or the Department of Community Correction, respectively, including proceedings for dealing with violations.

(b)(1) These rules shall require that inmates found guilty of damaging or destroying state property shall be ordered to pay restitution.

(2) This restitution shall be collected by levying against the inmate's institutional account. The levy against the inmate's account shall continue until the estimated damage to state property has been fully paid or until the inmate is released from incarceration, whichever occurs first.

(c)(1) In case of riot or other violent conduct or behavior on the part of any inmate or group of inmates, the Director of the Department of Correction may take such steps as are necessary, including the use of force and arms as necessary, to restore discipline and order.

(2) The Director of the Department of Correction may seek the assistance of the Department of Arkansas State Police, the National Guard, and local and federal law enforcement agencies in preserving order whenever the circumstances justify.

(d) The Director of the Department of Correction shall provide for a record of charges of infractions by inmates, including any punishment imposed, and shall also keep a record of all medical inspections made.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 10; 1983, No. 790, § 1; A.S.A. 1947, § 46-118; Acts 2009, No. 366, § 1.

Amendments. The 2009 amendment, in (a), inserted "or the Director of the

Department of Community Correction" and substituted "Correction or the Department of Community Correction, respectively" for "Corrections."

CASE NOTES**ANALYSIS**

Corporal Punishment.
Trustees.

Corporal Punishment.

Disciplining of inmates may not include corporal punishment. *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968) (decision under prior law).

Trustees.

Trustees may not be authorized to inflict summary punishment upon fellow prisoners under their charge. *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968) (decision under prior law).

12-29-104. Contacts with persons outside the institution.

Under rules prescribed by the Department of Correction, heads of the institutions of the department may authorize:

- (1) Visits and correspondence, under reasonable conditions, between inmates and approved friends, relatives, and others;
- (2) Temporary release of an inmate for such occasions as the serious illness or death of a member of the inmate's family; or
- (3) An interview of the inmate by a prospective employer.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 13; A.S.A. 1947, § 46-119.

12-29-105. Clergy.

(a) All clergy of every denomination shall be admitted free to a Department of Correction prison or may visit any convict confined therein, subject to such rules as may be necessary to the good government and discipline of the prison, and may administer the rites and ceremonies of the church to which the clergy belong if the convict desires it.

(b) The Director of the Department of Correction and the physician shall afford every facility to a clergy to visit a convict and to administer rites, ceremonies, and spiritual consolation not inconsistent with the rules of the prison to a convict.

History. Acts 1893, No. 76, § 58, p. 121; C. & M. Dig., § 9686; Pope's Dig., § 12719; A.S.A. 1947, § 46-149.

12-29-106. Mail to or from inmates.

(a)(1) No person without the consent of the Director of the Department of Correction shall bring into or carry out of a prison any letter or writing to or from any convict.

(2) Whoever shall violate the provisions of this section shall be guilty of a misdemeanor and shall on conviction be fined not exceeding one hundred dollars (\$100) or imprisoned in the county jail not exceeding thirty (30) days, or both fined and imprisoned.

(b) However, all convicts shall have the privilege, under the proper supervision and inspection of the director or his or her employees, to write and receive letters from their relations and friends.

History. Acts 1893, No. 76, § 53, p. 121; C. & M. Dig., § 9714; Pope's Dig., § 12745; A.S.A. 1947, § 46-168. **Publisher's Notes.** This section may be affected by § 5-54-119.

12-29-107. Inmate welfare funds.

Amounts held as inmate welfare funds or received as inmate welfare funds through contributions, profit from sale of products to inmates, or otherwise, shall be held as a special fund to be administered and used by the Director of the Department of Correction for the general benefit of the inmates under rules and regulations to be established by the Board of Corrections.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 39; A.S.A. 1947, § 46-122.

CASE NOTES

Cited: Diagnostic Unit Inmate Council v. Motion Picture Ass'n, 953 F.2d 376 (8th Cir. 1992).

12-29-108. Cash in possession of inmate — Confiscation.

(a) The Board of Corrections is authorized to promulgate rules and regulations concerning the maximum amount of cash that inmates of the Department of Correction may have in their possession.

(b) The board shall provide adequate facilities for the deposit and safekeeping of cash belonging to inmates at the department if the inmate desires to deposit it for safekeeping.

(c)(1) An inmate of the department shall forfeit any cash found on his or her person or in his or her possession in excess of the amount prescribed by rules or regulations of the board.

(2) After a hearing, the Director of the Department of Correction shall confiscate such cash and deposit the amount held in violation of the rules and regulations into a department welfare fund, to be used for the benefit of inmates of the department pursuant to rules and regulations of the board.

(3) A complete record of all funds forfeited and confiscated shall be maintained by the director.

History. Acts 1967, No. 474, § 1; A.S.A. 1947, § 46-178.

12-29-109. Board action upon violations of § 5-54-119.

If the Board of Corrections has good reason for believing that any violation of § 5-54-119 has occurred, it shall investigate the matter and report the facts together with the names of the witnesses to the proper prosecuting attorney.

History. Acts 1893, No. 76, §§ 51, 52, p. 121; C. & M. Dig., §§ 9712, 9713; Pope's Dig., §§ 12743, 12744; Acts 1975, No. 280, § 2819; 1977, No. 360, § 17; 1981, No. 60, § 1; 1985, No. 686, § 1; A.S.A. 1947, §§ 41-2819, 46-166, 46-167; Acts 1988 (4th Ex. Sess.), No. 8, § 3; 1988 (4th Ex. Sess.), No. 23, § 3; 2007, No. 827, § 129.

Amendments. The 2007 amendment substituted "Board action upon violations of § 5-54-119" for "Furnishing liquor, etc., to inmates" in the section heading; and rewrote the section.

12-29-110. Selling or trading position, working condition, or promotion — Penalty.

(a) It shall be unlawful for any inmate or employee of the Department of Correction or any other person to sell, barter, or trade, or to

promise or offer to sell, barter, or trade any favored job or position, working condition, or any promotion or demotion in any job or position at the department and to:

(1) Accept or receive any money, consideration, or thing of value therefor;

(2) Make or accept any loan or money as inducement thereof; or

(3) Accept or receive any favored condition or job or position at the department either directly or indirectly as a result thereof.

(b)(1) Any person violating the provisions of this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the department for not less than one (1) year nor more than five (5) years.

(2) If the person so convicted is an inmate in the department, the sentence shall commence to run from the expiration of the sentence under which the person is serving at the time of the violation.

History. Acts 1967, No. 475, §§ 1, 2;
A.S.A. 1947, §§ 46-179, 46-180.

12-29-111. Transport of inmate required for legal proceeding.

(a) When an inmate in the care and custody of the Department of Correction or the Department of Community Correction is required to be present during a legal proceeding of any court in this state, it shall be the duty of the county sheriff of the county in which the proceeding will take place to take custody of the inmate at the institution where the inmate is confined and to then transport the inmate to the appropriate county and make him or her available to the court.

(b) At the conclusion of the proceeding, the county sheriff shall transport the inmate back to the unit of the Department of Correction from which the inmate was received and shall return custody of the inmate to the Department of Correction officials.

(c)(1) The county sheriff's office shall be responsible for the custody, sustenance, and safety of the inmate from the time the inmate is placed into its custody until the time custody of the inmate is returned to the Department of Correction.

(2) The county in which the legal proceeding is held shall be responsible for all expenses relating to the transportation and care of the inmate.

(d) While transporting an inmate pursuant to this section, a county sheriff shall have the full power and authority of his or her office in any county of this state in matters relating to the transportation.

(e) There shall be excluded from this section transportation and care costs for court appearances arising from charges brought by the Department of Correction against the inmate for offenses committed while the inmate is under the custody and care of the Department of Correction.

History. Acts 1975, No. 737, § 1; A.S.A. 1947, § 46-181; Acts 2009, No. 364, § 1. inserted "or the Department of Community Correction" in (a).

Amendments. The 2009 amendment

CASE NOTES

Cited: McGee v. Rankin, 584 F. Supp. 1202 (W.D. Ark. 1984).

12-29-112. Discharge or release.

(a) Inmates released upon completion of their term or released on parole shall be supplied with satisfactory clothing and a travel subsidy as prescribed by the Board of Corrections.

(b) Upon release of any inmate from any unit or center of the Department of Correction, the department shall provide transportation for the inmate to the closest commercial transportation pick-up point.

(c) Before the release of an inmate from any unit or center of the department, the department shall provide:

(1) Testing or screening of the inmate for human immunodeficiency virus (HIV); and

(2) Counseling regarding treatment options if the inmate tests positive for human immunodeficiency virus (HIV).

(d) An inmate released upon completion of his or her terms of incarceration shall be provided:

(1) Written and certified proof that he or she completed and satisfied all the terms of his or her incarceration; and

(2) Information on how to reinstate his or her voting rights upon discharge of his or her sentence.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 15; 1969, No. 377, § 7; 1981, No. 58, § 3; 1981, No. 107, § 1; A.S.A. 1947, §§ 46-121, 46-914; Acts 2007, No. 271, § 1; 2009, No. 788, § 4.

A.C.R.C. Notes. Acts 2009, No. 788, § 1, provided: "Whereas, Arkansas Code § 12-28-101(a)(2) authorizes the Department of Correction to provide education and other rehabilitation and treatment programs designed to prepare inmates committed to the department for productive and law-abiding lives upon release from the Department of Correction; and

"Whereas, Arkansas Code § 12-29-301 establishes the Department of Corrections School System to provide elementary, secondary, and vocational and technical education to qualified persons incarcerated in the Department of Correction and the Department of Community Correction and qualified persons supervised by the Department of Community Correction; and

"Whereas, Arkansas Code § 12-29-101(d)(2) provides that inmates in the institutions of the Department of Correction may participate in and benefit from the vocational, educational, and rehabilitation services of their respective institutions solely within the rules and regulations of the department as determined by the director, subject to appeal and review by the Board of Corrections or a designated review board in accordance with procedures that shall be established by the board; and

"Whereas, the Corrections School System along with the Department of Correction and the Department of Community Correction have entered into agreements to provide college courses to qualified persons under Administrative Regulation 500 which are taught onsite by accredited college and universities."

Amendments. The 2007 amendment added (c).

The 2009 amendment added (d).

CASE NOTES

Warning to Others.

State's actions in releasing and transporting inmate to a person's store, without a warning he was dangerous, did not deprive storeowner of her life and infringe

her liberty interest in personal security in violation of her substantive due process rights. *Wells v. Walker*, 852 F.2d 368 (8th Cir. 1988), cert. denied, 489 U.S. 1012, 109 S. Ct. 1121, 103 L. Ed. 2d 184 (1989).

12-29-113. Notice of escape to law enforcement officers — Penalty.

(a)(1) Whenever any inmate of the Department of Correction shall escape from its custody, it shall be the duty of the Director of the Department of Correction or his or her designee to immediately notify the appropriate law enforcement officers in the area where the escape took place.

(2) Notification of law enforcement officers in other areas of the state as well as surrounding states will be made as deemed necessary by the department.

(b) A violation of any provision of this section shall be a violation and shall be punished by a fine of not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

History. Acts 1887, No. 113, §§ 1, 4, p. 203; C. & M. Dig., §§ 9690, 9708; Pope's Dig., §§ 12722, 12739; Acts 1967, No. 477, § 1; 1981, No. 56, § 1; A.S.A. 1947, §§ 46-160, 46-161; Acts 2005, No. 1994, § 78.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b).

12-29-114. Notice of escape to victim or victim's next of kin.

(a)(1) Whenever an inmate serving a sentence for the commission of a crime escapes from the custody of the Department of Correction, it shall be the responsibility of the department to immediately notify the victim of the crime or the victim's next of kin of the inmate's escape.

(2) However, the victim of the crime or the victim's next of kin will not be notified by the department unless a request for the notification has previously been delivered in writing to the department.

(b)(1) When notice of an escape is given by the department, it shall be conveyed by telephone whenever possible and otherwise in writing to the last known address of the victim or the victim's next of kin.

(2) It shall be the responsibility of the victim or the victim's next of kin to notify the department in writing of any future changes in the victim's or victim's next of kin address and telephone number.

(c) It shall be the responsibility of the prosecuting attorney of the county from which the inmate was committed to notify the victim or the victim's next of kin that an address and telephone number may be provided to the department, and the procedure by which to supply information, for the purpose of notification should the inmate escape.

History. Acts 1985, No. 428, §§ 1-3; Victim notification system, § 12-12-1985, No. 470, §§ 1-3; A.S.A. 1947, §§ 46-1201 et seq.
161.1 — 46-161.3.

Cross References. Escapes, §§ 5-54-110 — 5-54-112.

12-29-115. Combination to escape — Authority of guards.

(a) The officers and guards of the Department of Correction shall use all lawful and suitable means to defend themselves, secure the persons of offenders, and prevent attempted violence and escape whenever two (2) or more convicts shall combine for the following purposes or whenever one (1) or more convicts shall:

- (1) Offer violence to any officer, guard, or convict;
- (2) Do or attempt to do any injury to any building, workshop, or appurtenance thereto;
- (3) Attempt to escape; or
- (4) Resist any lawful demand.

(b) If any of the officers or guards employed in the department shall, in the attempt to prevent the escape of any convict, any attempt to retake any convict who may have escaped, or in the attempt to suppress any riot, revolt, or insurrection, take the life of any convict, the officer or guard shall not be held responsible therefor unless it is done unnecessarily or wantonly.

History. Acts 1893, No. 76, § 49, p. 121; C. & M. Dig., § 9691; Pope's Dig., § 12723; A.S.A. 1947, § 46-163.

12-29-116. Authority of director in case of alarm or danger.

The Director of the Department of Correction shall have the authority of a county sheriff over the power of the county in which a Department of Correction's prison or convict camp is situated in all cases of alarm or danger at the prison or camp, in the absence of the county sheriff or the county sheriff's inability to act.

History. Acts 1893, No. 76, § 56, p. 121; C. & M. Dig., § 9724; Pope's Dig., § 12755; A.S.A. 1947, § 46-164.

SUBCHAPTER 2 — GOOD TIME ALLOWANCE

SECTION.

- 12-29-201. Meritorious good time.
12-29-202. Classification committee —
Classifications.
12-29-203. Forfeiture — Restoration.
12-29-204. Statutory good time — Maxi-
mum reduction.

SECTION.

- 12-29-205. Good time earned pending
transfer to Department of
Correction or the Depart-
ment of Community Cor-
rection.

Cross References. Local correctional facilities, good time allowance, § 12-41-101 et seq.

Effective Dates. Acts 1971, No. 510, § 8: approved Apr. 2, 1971. Emergency clause provided: "The General Assembly finds that there is an immediate need for 'meritorious good time' awards to encourage good discipline, good behavior and efficiency within the institution. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after the date of its enactment."

Acts 1972 (Ex. Sess.), No. 59, § 4: Mar. 6, 1972. Emergency clause provided: "The Sixty-Eighth General Assembly, meeting in Extraordinary Session hereby finds that there is an immediate need for 'meritorious good time' awards to encourage good discipline, good behavior and efficiency within the institutions of the Department of Correction. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1981, No. 55, § 5: Feb. 12, 1981. Emergency clause provided: "The General Assembly finds that the penal system of the State of Arkansas, especially regarding the earning of 'good time' is in need of immediate reform, in order to better effectuate the rehabilitation of persons convicted of crimes and to make possible their return as useful members of the community, and that the immediate passage of this act is necessary to facilitate these reforms. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 273, § 2: Mar. 17, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that rewards for rehabilitation are important tools and that this act provides such rewards and should be given immediate effect. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety

shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 506, § 3: Apr. 1, 1987. Emergency clause provided: "Changes in good time awards are in need of immediate reform."

Acts 1987, No. 626, § 6: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to the current backup of prisoners, this Act is immediately necessary to maintain good discipline and efficiency within the criminal justice system. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, Nos. 429, 734, § 4: approved Mar. 9 and Mar. 21, 1989, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly that meritorious good time should be awarded to inmates for the successful completion of a graduate equivalent degree, substance abuse treatment program, vocational-technical education courses or college courses; that this Act would encourage inmates to participate in such programs by awarding them meritorious good time; that until this Act becomes effective such incentives will not be applicable; and that this Act should therefore be given immediate effect. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 309, § 5: Mar. 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that rewards for rehabilitation are important tools and that this Act provides such rewards and should be given immediate effect. Therefore, an immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 571, § 5: Mar. 15, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that rewards for rehabilitation are important tools and that this Act provides such rewards and should be given immediate effect. Therefore, an immediate

preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 574, § 8: Mar. 15, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that under present law persons sentenced to the Department of Correction and awaiting transfer to the department are entitled to earn meritorious goodtime during such wait only if the delay is due to lack of space in the Department of Correction facilities; that it is only fair that those persons be permitted to earn meritorious goodtime while waiting for transfer for whatever reason; that this act is designed to correct this situation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public

peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, Nos. 536 and 558, § 7: Jan. 1, 1994.

Acts 2003, No. 1005, § 2: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is serious overcrowding in the Department of Correction facilities and that such overcrowding is likely to worsen unless appropriate action is taken immediately; that this act is immediately necessary because it is designed to allow a procedure for helping to alleviate this problem. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

12-29-201. Meritorious good time.

(a) An inmate may be entitled to meritorious good time reducing his or her transfer eligibility date up to thirty (30) days for each month incarcerated after imposition of sentence in one (1) of the units, facilities, and centers maintained by the Department of Correction or the Department of Community Correction.

(b) An inmate transferred or paroled to the supervision of the Department of Community Correction under § 16-93-206 may receive meritorious good time reducing his or her time of transfer or parole supervision up to thirty (30) days for each month he or she is under the supervision of the Department of Community Correction.

(c) Meritorious good time shall be allocated under rules and regulations promulgated by the Board of Corrections and administered by the respective Department of Correction or Department of Community Correction staff subject to the provisions of this subchapter for good discipline, behavior, work practices, job responsibilities, and involvement in rehabilitative activities while in the custody or under the supervision of the Department of Correction or the Department of Community Correction.

(d) Meritorious good time will not be applied to reduce the length of a sentence.

(e)(1) Meritorious good time shall apply to an inmate's transfer eligibility date from the Department of Correction or a community correction facility.

(2) Meritorious good time shall under no circumstances reduce an inmate's time served in prison by more than one-half ($\frac{1}{2}$) of the percentage required by law for transfer eligibility.

(3) Meritorious good time shall under no circumstances reduce an inmate's confinement in a community correction facility by more than one-half ($\frac{1}{2}$).

(f)(1) The Department of Correction or the Department of Community Correction shall determine a date on which the inmate who has acquired the maximum amount of meritorious good time necessary is to be administratively transferred to a less restrictive placement or supervision level within the Department of Community Correction.

(2) This date will be determined in accordance with the policies developed by the Arkansas Sentencing Commission within the parameters allowed by law.

(g)(1) Inmates under sentence of death or life imprisonment without parole shall not be eligible for meritorious good time under this subchapter but may be pardoned or have their sentences commuted by the Governor, as provided by law.

(2) Inmates sentenced to life imprisonment shall not receive meritorious good time calculated on their sentences unless the sentence is commuted to a term of years by executive clemency.

(3) Upon commutation, the inmate shall be eligible to receive meritorious good time at the rate established by this subchapter.

History. Acts 1993, No. 536, §§ 1, 2; 1993, No. 558, §§ 1, 2; 2003, No. 1005, § 1.

Publisher's Notes. Former § 12-29-201 concerning meritorious allowance was

repealed by Acts 1993, Nos. 536 and 558, § 6. The former section was derived from Acts 1971, No. 510, §§ 2, 3; 1972 (Ex. Sess.), No. 59, § 1; A.S.A. 1947, §§ 46-120, 46-120.1; Acts 1987, No. 506, § 1.

CASE NOTES

ANALYSIS

Authority of Department.
Interstate Correction Compact.

Authority of Department.

The trial court properly refused to force the department to credit the petitioner with meritorious good time credits since the exclusive jurisdiction of custody, control, and supervision of all persons in the penitentiary is vested with the Department of Correction. *Elliott v. State*, 268 Ark. 454, 597 S.W.2d 76 (1980).

Interstate Correction Compact.

Prisoner transferred to Florida pursuant to the Interstate Corrections Compact, § 12-49-102, was entitled to good time and other benefits he earned while in Florida as if he had earned them in Arkansas. *Hayes v. Lockhart*, 754 F.2d 281 (8th Cir. 1985).

Cited: *Finney v. Arkansas Bd. of Cor.*, 505 F.2d 194 (8th Cir. 1974); *Elliott v. State*, 268 Ark. 454, 597 S.W.2d 76 (1980); *Thomas v. Arkansas Bd. of Cor. & Community Punishment*, 324 Ark. 6, 918 S.W.2d 156 (1996).

12-29-202. Classification committee — Classifications.

(a)(1) There is established a classification committee to be defined by administrative regulations approved by the Board of Corrections.

(2) Members of the committee shall be selected by wardens or supervisors of the various units, facilities, or centers of the Department of Correction and Department of Community Correction per board regulation governing their selection.

(3) This committee shall meet as often as necessary to classify the inmates into no more than four (4) classes according to good behavior, good discipline, medical condition, job responsibilities, and involvement in rehabilitative activities.

(b)(1) An inmate who maintains class through good behavior, good discipline, work practices, job responsibilities, and involvement in rehabilitative activities may earn up to one (1) day for every day served as a reduction toward his or her transfer eligibility date for each day incarcerated after the imposition of sentence.

(2) An inmate who is reduced to the lowest class, established through board policy, as a result of disciplinary action shall not be entitled to earn meritorious good time.

(3) An inmate serving a punitive disciplinary sentence in punitive segregation shall not be entitled to earn meritorious good time.

(c) An inmate may be reclassified as often as the committee deems necessary or in accordance with current board regulations to carry out the purpose of this subchapter and to maintain good discipline, order, and efficiency at the units, facilities, or centers.

(d)(1) Upon recommendation of the committee, the Director of the Department of Correction may award an amount of meritorious good time sufficient to reduce incarceration time by up to ninety (90) days, not to exceed a total of two hundred seventy (270) days, for each successful completion of a:

(A) State-sponsored general education development certificate program;

(B) Vocational program for which certification is awarded; or

(C) Drug or alcohol treatment program offered at a Department of Correction facility.

(2)(A) The additional days of meritorious good time described in subdivision (d)(1) of this section shall be awarded pursuant to rules promulgated by the board.

(B) The board may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) In no event shall the awarding of meritorious good time under subdivision (d)(1) of this section be applicable to persons sentenced under § 16-93-611(a)(1)(A)-(E).

(f) A jury may be instructed pursuant to § 16-97-103 regarding the awarding of meritorious good time under subdivision (d)(1) of this section.

History. Acts 1993, No. 536, § 3; 1993, No. 558, § 3; 1997, No. 876, § 1; 2005, No. 681, § 1; 2007, No. 1413, § 1.

Publisher's Notes. Former § 12-29-202, concerning the classifications committee, establishment of classifications and award of additional good time was repealed, effective January 1, 1994. The section was derived from Acts 1971, No.

510, § 5; 1972 (Ex. Sess.), No. 59, § 2; 1981, No. 55, § 2; A.S.A. 1947, § 46-120.3; Acts 1987, No. 273, § 1; 1989, No. 429, § 1; 1989, No. 734, § 1; 1991, No. 309, § 1; 1991, No. 571, § 1.

Amendments. The 2005 amendment added (d)-(f).

The 2007 amendment substituted "an amount of meritorious good time sufficient

to reduce incarceration time by up to ninety (90) days” for “up to ninety (90) additional days” in (d)(1).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Management; and Military Affairs, 28 U. Legislation, 2005 Arkansas General As- Ark. Little Rock L. Rev. 365.
sembly, Law Enforcement, Emergency

CASE NOTES

ANALYSIS

Due Process.
Ex Post Facto Rights.

Due Process.

This section does not protect an inmate’s right to any particular classification; therefore, a reduction of two steps in class as an inmate’s penalty for violating a prison rule did not deprive him of due process. Strickland v. Dyer, 628 F. Supp. 180 (E.D. Ark. 1986).

Ex Post Facto Rights.

The repeal of a provision that had afforded prison officials the discretion to award additional good-time credits to prisoners did not constitute an ex post facto violation of the defendant’s rights. Ellis v. Norris, 232 F.3d 619 (8th Cir. 2000), cert. denied, 532 U.S. 935, 121 S. Ct. 1389, 149 L. Ed. 2d 313 (2001).

Cited: Thomas v. Arkansas Bd. of Cor. & Community Punishment, 324 Ark. 6, 918 S.W.2d 156 (1996).

12-29-203. Forfeiture — Restoration.

(a) All meritorious good time shall be forfeited by an inmate in the event of escape, and all or part of accrued good time may be taken away by the Director of the Department of Correction for infraction of rules.

(b) However, in the event of escape, the Director of the Department of Correction may restore all or part of any accrued meritorious good time if the escapee returns to the institution voluntarily, without expense to the state, and without act of violence while a fugitive from an institution.

(c) The Director of the Department of Correction or the Director of the Department of Community Correction, respectively, may restore lost good time according to rules promulgated by the Board of Corrections.

History. Acts 1971, No. 510, § 4; A.S.A. 1947, § 46-120.2; Acts 1993, No. 536, § 4; 1993, No. 558, § 4.

A.C.R.C. Notes. Subsection (c) of this section, amended by identical 1993 acts Nos. 536 and 558, § 4, effective January 1, 1994, was repealed and replaced by implication.

12-29-204. Statutory good time — Maximum reduction.

No inmate sentenced to the Department of Correction shall ever receive a reduction under this subchapter, or this subchapter and another subchapter jointly, of more than thirty (30) days for each month served except for the additional days of meritorious good time awards authorized in § 12-29-202(d).

History. Acts 1971, No. 510, § 6; A.S.A. 1947, § 46-120.5; Acts 2005, No. 681, § 2; 2005, No. 1962, § 49.

Amendments. The 2005 amendment by No. 681 added “except for the additional days of meritorious good time awards authorized in § 12-29-202(d).”

The 2005 amendment by No. 1962 deleted “Those inmates sentenced to the Department of Correction prior to April 2,

1971, shall be entitled to “statutory good time” as provided in Acts 1968 (1st Ex. Sess.), No. 50, § 14 [repealed], provided” from the beginning, inserted “sentenced to the Department of Correction” following “inmate,” added “except for the additional days of meritorious good time awards authorized in § 12-29-202(d),” and made related changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Law Enforcement, Emergency

Management, and Military Affairs, 28 U. Ark. Little Rock L. Rev. 365.

12-29-205. Good time earned pending transfer to Department of Correction or the Department of Community Correction.

(a)(1) Any person who is sentenced by a circuit court to the Department of Correction or the Department of Community Correction and is awaiting transfer to the Department of Correction or Department of Community Correction may earn meritorious good time in accordance with law and regulations as adopted by the Board of Corrections.

(2) Meritorious good time will only be given for being housed in a jail or similar secure facility while awaiting transfer on the conviction resulting in a sentence from that county.

(3) Meritorious good time will be calculated upon reception within the respective department.

(b) Meritorious good time will be awarded unless the county sheriff of record submits written objections to such award based on the prisoner’s behavior, discipline, and the conduct or performance of such duties and responsibilities as assigned by such county sheriff or his or her designated representatives.

(c) This meritorious good time award is subject to all rules and regulations regarding meritorious good time including, but not limited to, those regulations for forfeiture of meritorious good time as adopted by the board.

History. Acts 1993, No. 536, § 5; 1993, No. 558, § 5.

Publisher’s Notes. Former § 12-29-205, concerning good time earned pending transfer to Department of Correction, was

repealed by Acts 1993, Nos. 532 and 558, § 6, effective January 1, 1994. The former section was derived from Acts 1987, No. 626, §§ 1-4; 1991, No. 329, § 1; 1991, No. 574, § 1.

SUBCHAPTER 3 — EDUCATION

SECTION.

12-29-301. School system created.

12-29-302. Rules and regulations.

SECTION.

12-29-303. Privileges of students — Limitations.

- SECTION.
- 12-29-304. Costs and funding.
 - 12-29-305. Gifts and bequests.
 - 12-29-306. Riverside Vocational and Technical School — Legislative intent.
 - 12-29-307. Riverside Vocational and Technical School — Establishment.
 - 12-29-308. Riverside Vocational and Technical School — Purpose.

- SECTION.
- 12-29-309. Riverside Vocational and Technical School — Facilities — Operations — Rules and regulations.
 - 12-29-310. Riverside Vocational and Technical School — Cost of implementation and operation.

Cross References. Vocational and technical education, § 6-50-101 et seq.

Effective Dates. Acts 1973, No. 279, § 9: Mar. 12, 1973. Emergency clause provided: "The General Assembly finds that there is an immediate need for the institution of basic education for inmates of the Department of Correction, to the end that the said inmates may improve their minds and characters and become less likely to commit further crimes. An emergency is therefore declared to exist, and this act, being necessary for the public health, safety, and welfare, shall be effective from and after its passage and approval."

Acts 1985, No. 288, § 5: July 1, 1985.
Acts 1985, No. 751, § 2: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined that Act 279 of 1973 established the Department of Correction School District for the purpose of providing elementary, secondary, and vocational technical education to all persons incarcerated in the Department of Correction facilities who are not high school graduates, irrespective of age; that subsection (b) of Section 3 of Act 279 of 1973 authorized the Department of Correction School District to share in Minimum Foundation Program Aid under distribution laws then in effect; that the First Extraordinary Session of 1983 substantially revised the method of distributing Minimum Foundation Program Aid funds to school districts in this state; and that the immediate passage of this act is nec-

essary to enable the Department of Correction to be eligible to receive Minimum Foundation Program Aid funds under the latest revisions of the Minimum Foundation Program Distribution Law, and to enable the Department of Correction to continue its eligibility to receive said funds, even though all aspects of the operation of said school may not conform to the quality education standards due to the restrictions on the educational program within such correctional facility. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 671, § 4: Mar. 20, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion has arisen concerning the funding of the public school program operated in the Department of Correction; that it is necessary to clarify that funds generated from various programs within the department may be utilized in support of the public school district within the department; and that the immediate passage of this act is necessary to resolve the uncertainty surrounding this issue. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

Rights of Employees.

Where plaintiff was employed with the Department of Correction School District as a teacher and was required to have a State teaching certificate as prerequisite

to employment, he was a teacher within the meaning of the Teacher Fair Dismissal Act. *Allred v. Arkansas Dep't of Cor. Sch. Dist.*, 322 Ark. 772, 912 S.W.2d 4 (1995).

12-29-301. School system created.

(a) Properties owned by the State of Arkansas and occupied by the various units of the Department of Correction and the Department of Community Correction are by this subchapter designated as a qualified school district to be known as the "Corrections School System".

(b) The system is created for the purpose of providing elementary, secondary, and vocational and technical education to qualified persons incarcerated in facilities of the Department of Correction and the Department of Community Correction or to qualified persons supervised by the Department of Community Correction, including those on probation and parole or any type of post prison release or transfer who are not high school graduates, irrespective of age.

(c) The Board of Corrections shall act as the Board of Directors of the Corrections School System.

(d)(1) The system's chief administrative officer shall be under the direct authority of the Board of Directors of the Corrections School System.

(2) Subject to the approval of the Board of Directors of the Corrections School System, the chief administrative officer or superintendent of the system shall have supervisory authority over the employees of the system, including, but not limited to, assistant superintendents, principals, and teachers.

History. Acts 1973, No. 279, §§ 1, 2; A.S.A. 1947, §§ 46-1301, 46-1302; Acts 2005, No. 496, § 1.

Publisher's Notes. Acts 1973, No. 279, § 2, provided, in part, that, notwithstanding the other provisions of the act, the adult education programs administered by the England Special School District No. 2, on March 12, 1973, would continue to be administered by that district, and that all federal and state funds received by that district for such programs would be applied against federal and state funds available to the Department of Correction School District under the act.

Amendments. The 2005 amendment, in (a), inserted "and the Department of Community Correction" and "qualified" and substituted "Corrections School System" for "Department of Correction School District"; in (b), substituted "The qualified system" for "This district" and "qualified persons incarcerated ... release or transfer" for "all persons incarcerated in department facilities"; substituted "Board of Directors of the Corrections School System" for "school district" in (c); and added (d).

CASE NOTES

ANALYSIS

Mandatory Enrollment.
Purpose.

Mandatory Enrollment.

There is no “constitutional right to be ignorant,” and state clearly has the right, through forced school enrollment, to undertake rehabilitation of its inmates through education. *Rutherford v. Hutto*, 377 F. Supp. 268 (E.D. Ark. 1974).

Purpose.

While the Department of Correction School District is certainly different from

other public school districts, it is clear that the General Assembly intended to establish a public school district within the Department of Correction for the benefit of both the free and the incarcerated populations; further, public federal funds and state funds from the Departments of Education and Correction support the district. *Allred v. Arkansas Dep’t of Cor. Sch. Dist.*, 322 Ark. 772, 912 S.W.2d 4 (1995).

12-29-302. Rules and regulations.

The Board of Corrections and the State Board of Education are directed, authorized, and empowered to adopt rules and regulations as are necessary to implement the provisions of this subchapter.

History. Acts 1973, No. 279, § 4; A.S.A. 1947, § 46-1304.

12-29-303. Privileges of students — Limitations.

A school established under this subchapter and a person incarcerated who attends the school shall be entitled to certain educational privileges provided generally to common public schools and adult education programs administered by the State Board of Education to students who attend the common public schools and adult education programs under the laws of the State of Arkansas, provided the privileges do not conflict with the rules and policies of the State Board of Education, the Department of Correction, and the Department of Community Correction or the laws of the state respecting the establishment and operation of the Department of Correction and the Department of Community Correction.

History. Acts 1973, No. 279, § 5; A.S.A. 1947, § 46-1305; Acts 2005, No. 496, § 2.

Amendments. The 2005 amendment deleted “the provisions of” following “established under,” substituted “certain

educational privileges” for “all of the privileges” and “departments” for “department,” and inserted “State Board of Education” and “and the Department of Community Correction.”

CASE NOTES

Cited: *Allred v. Arkansas Dep’t of Cor. Sch. Dist.*, 322 Ark. 772, 912 S.W.2d 4 (1995).

12-29-304. Costs and funding.

(a) The cost of implementing and operating the Corrections School System shall be borne by the state and shall be paid from funds appropriated by the General Assembly from the general revenues of the state to the Department of Correction, the Department of Community Correction, and the Department of Education, together with any federal funds that may be available for that purpose and from any funds generated from the operations of the Department of Correction and the Department of Community Correction, in the following manner:

(1) The cost of facilities, equipment, and current operation in excess of the amount of grants and aids received from the Department of Education shall be borne by the Department of Correction and the Department of Community Correction as approved by the Board of Corrections;

(2)(A) The system, as other school districts in the state, shall share in the distribution of grants and aids from the Department of Education.

(B) However, in no case shall the moneys from the Public School Fund to the system be in excess of the line item appropriation provided to the system in the fund.

(b)(1) Recognizing that the primary roles, duties, and responsibilities of the Department of Correction and the Department of Community Correction are to serve as penal and correctional institutions, the system shall be exempt from and shall not be penalized in any manner for not complying with:

(A) All of the following:

(i) The Quality Education Act of 2003, § 6-15-201 et seq.;

(ii) The Arkansas Comprehensive Testing, Assessment, and Accountability Program Act, § 6-15-401 et seq.;

(iii) Sections 6-15-901, 6-15-902, 6-15-2001 — 6-15-2008, 6-15-2101 — 6-15-2107, 6-15-2201, 6-15-2301, and 6-16-1201 — 6-16-1206;

(iv) The Arkansas Fiscal Assessment and Accountability Program, § 6-20-1901 et seq.; and

(v) The Arkansas Educational Financial Accounting and Reporting Act of 2004, § 6-20-2201 et seq.;

(B) Any state laws or rules adopted to comply with the federal Elementary and Secondary Education Act as reauthorized under the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 et seq., as in existence on January 1, 2005; and

(C) Any rule of the State Board of Education related to the provisions listed in this subdivision (b)(1).

(2) The system's exemption from or noncompliance with the provisions under this subsection shall not affect the system's, the Department of Correction's, or the Department of Community Correction's eligibility to apply for or receive state grants or aids for public school districts as authorized in this subchapter and related rules.

History. Acts 1973, No. 279, § 3; 1985, No. 751, § 1; A.S.A. 1947, § 46-1303; Acts 1989, No. 671, § 1; 1999, No. 391, § 37; 2005, No. 496, § 3.

Amendments. The 2005 amendment rewrote this section.

CASE NOTES

Cited: Allred v. Arkansas Dep’t of Cor. Sch. Dist., 322 Ark. 772, 912 S.W.2d 4 (1995).

12-29-305. Gifts and bequests.

The Board of Corrections and the State Board of Education may accept gifts, grants, donations, equipment, materials, bequests, and real and personal property from public and private sources to implement and operate the school program authorized by this subchapter.

History. Acts 1973, No. 279, § 6; A.S.A. 1947, § 46-1306.

12-29-306. Riverside Vocational and Technical School — Legislative intent.

(a) This section and §§ 12-29-307 — 12-29-310 are intended to create an additional state vocational and technical school to provide vocational and technical education and training opportunities to qualified persons incarcerated in facilities of the Department of Correction and the Department of Community Correction or to qualified persons supervised by the Department of Community Correction, including those on probation and parole or any type of post prison release or transfer.

(b) This section and §§ 12-29-307 — 12-29-310 are not intended to modify or repeal any of the laws of this state pertaining to vocational and technical schools or vocational and technical education.

History. Acts 1985, No. 288, § 4; A.S.A. 1947, § 46-1307; Acts 2005, No. 496, § 4.

Amendments. The 2005 amendment inserted the subsection designations; inserted “the Department of Community Correction or to qualified persons supervised by the Department of Community

Correction including those on probation and parole or any type of post prison release or transfer” in present (a); and substituted “This section and §§ 12-29-307 and 12-29-310 are” for “is” in present (b).

12-29-307. Riverside Vocational and Technical School — Establishment.

There is established a state vocational and technical school, to be known as the “Riverside Vocational and Technical School”, to be operated by the State Board of Career Education within the Department of Correction and the Department of Community Correction at such facilities of the Department of Correction and the Department of Community Correction as may be designated by the Department of

Career Education in cooperation and agreement with the Board of Corrections.

History. Acts 1985, No. 288, § 1; A.S.A. 1947, § 46-1308; Acts 2005, No. 496, § 5. inserted “and the Department of Community Correction.”

Amendments. The 2005 amendment

12-29-308. Riverside Vocational and Technical School — Purpose.

The Riverside Vocational and Technical School is created for the purpose of providing vocational and technical educational opportunities to qualified persons incarcerated in facilities of the Department of Correction and the Department of Community Correction or to qualified persons supervised by the Department of Community Correction, including those on probation and parole or any type of post prison release or transfer who would be qualified to receive vocational and technical education and training in state vocational and technical schools established by the State Board of Career Education under the provisions of §§ 6-51-201 — 6-51-203, 6-51-205, 6-51-207 — 6-51-210, and other laws of this state relative to vocational and technical schools.

History. Acts 1985, No. 288, § 2; A.S.A. 1947, § 46-1309; Acts 2005, No. 496, § 6. of Correction ... prison release or transfer” for “the Department of Correction facilities.”

Amendments. The 2005 amendment substituted “facilities of the Department

12-29-309. Riverside Vocational and Technical School — Facilities — Operations — Rules and regulations.

(a) For the purpose of enabling the Department of Correction and the Department of Community Correction to fulfill their legal responsibilities as correctional institutions, the State Board of Career Education shall locate facilities and operate vocational education programs within the Riverside Vocational and Technical School under such agreements, and subject to such special rules and regulations, as are deemed appropriate for the operation of vocational and technical school programs at the facilities of correctional institutions under the control of the Department of Correction and the Department of Community Correction in accordance with agreements, rules, and regulations mutually developed and agreed to by the State Board of Career Education and the Board of Corrections.

(b) The school shall be entitled to all funds, rights, and privileges and shall be operated in the same manner as other area vocational and technical schools are operated in this state but shall be operated in accordance with the special rules and regulations for the operation of such vocational and technical school programs at facilities of the Department of Correction and the Department of Community Correction as provided in §§ 12-29-306 — 12-29-310.

History. Acts 1985, No. 288, § 2; A.S.A. 1947, § 46-1309; Acts 2005, No. 496, § 7.

Amendments. The 2005 amendment, in (a), inserted “and the Department of Community Correction” and substituted “fulfill their” for “fulfill its,” “institutions” for “institution” and “Department of Cor-

rection and the Department of Community Correction” for “department”; and substituted “Department of Correction and the Department of Community Correction” for “department of Correction” in (b).

12-29-310. Riverside Vocational and Technical School — Cost of implementation and operation.

(a) The cost of implementing and operating the Riverside Vocational and Technical School at facilities of the Department of Correction and the Department of Community Correction as authorized by this section and §§ 12-29-306 — 12-29-309 shall be borne by the state and shall be paid from funds appropriated by the General Assembly to the school, the Department of Career Education, and to the Department of Correction and the Department of Community Correction, together with any federal funds that may be available for this purpose in the following manner:

(1) The cost of facilities and equipment in excess of the amount of moneys provided by the school and the Department of Career Education shall be borne by the Department of Correction and the Department of Community Correction as approved by the Board of Corrections; and

(2)(A) This section and §§ 12-29-306 — 12-29-309 contemplate that the Department of Correction and the Department of Community Correction will provide facilities for the vocational and technical education programs operated by the school.

(B) However, nothing in this section and §§ 12-29-306 — 12-29-309 shall prohibit the State Board of Career Education from providing facilities or sharing in the cost of facilities and from providing or sharing in the cost of repairing, maintenance, and upkeep of the buildings and facilities with the Department of Correction and the Department of Community Correction as funds are provided by the General Assembly, or are otherwise available for these purposes.

(b) The school shall be administered under the direction and supervision of the chief administrative officer of the Corrections School System or the Director of the Riverside Vocational and Technical School under the direct authority of the Board of Directors of the Corrections School System.

History. Acts 1985, No. 288, § 3; A.S.A. 1947, § 46-1310; Acts 2005, No. 496, § 8.

Amendments. The 2005 amendment inserted “and the Department of Community Correction” in (a) and twice in present (a)(2); substituted “the Riverside Vocational and Technical School, the Department of Career Education, the Department of Correction, and to the Department of Community Correction” for

“the Department of Workforce Education and to the Department of Correction” in (a); in (a)(1), inserted “Riverside Vocational and Technical School and the” and “and the Department of Community Correction as approved by the Board of Corrections”; deleted former (a)(2)(A); redesignated former (a)(2)(B) as present (a)(2); rewrote (b); and deleted (c).

SUBCHAPTER 4 — MEDICAL CARE

SECTION.

- 12-29-401. Medical care.
12-29-402. Physical examination — Assignment to labor.
12-29-403. Disabled convicts — Duty of physician.

SECTION.

- 12-29-404. Incurable diseases.
12-29-405. Inmates with mental illness.
12-29-406. Treatment for deviant sexual behavior.

Preambles. Acts 1987, No. 777, contained a preamble which read: "Whereas, there are currently over 600 inmates in the Arkansas Department of Correction convicted of sex related offenses; and

"Whereas, studies indicate that an unknown proportion of this group have paraphilias (sexual deviations) which, if ignored will result in continued sex related crimes upon release; and

"Whereas, an individualized assessment and treatment program in the Department of Correction to screen for sexually transmitted diseases and teach socially accepted behavior would decrease the amount of recidivism of these inmates;

"Now therefore...."

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 50, § 46: Mar. 1, 1968. Emergency clause provided: "The General Assembly finds that the penal system of the State of Arkansas is in need of immediate reform, in order better to effectuate the rehabilitation of persons convicted of crime and to make possible their return as useful members of the community, and that the immediate passage of this act is necessary to establish a Department of Correction to effectuate such rehabilitation. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after March 1, 1968."

Acts 1981, No. 59, § 4: Feb. 12, 1981. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the present custody classification of prisoners is quite ambiguous and difficult to implement; that this act is necessary to correct such deficiency in the law. It is further found and determined by the General Assembly that the present law which requires physicals to be given twice a year is arbitrary and unnecessary and a waste of taxpayer money; that physicals should be given as often as needed as determined by the medical staff of the Department of Correction as this act requires. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect after its passage and approval."

Acts 1981, No. 507, § 4: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that in order to meet constitutional requirements the Arkansas Department of Correction should be authorized to develop in-house due process procedures for transferring inmates to the State Hospital; that the State Hospital should not be limited in the length of time it can retain custody of the inmates to treat such mental illness; and that this act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

12-29-401. Medical care.

(a) The Department of Correction shall establish and shall prescribe standards for health, medical, mental health, and dental services for each institution, including preventive, diagnostic, and therapeutic

measures on both an outpatient and inpatient basis for all types of patients.

(b) An inmate may be taken, when necessary, to a medical facility outside the institution, but the Director of the Department of Correction shall provide ample safeguards for the custody of the inmate while confined in a medical facility outside the institution.

(c) The Board of Corrections is authorized to establish and maintain facilities for health, medical, mental health, and dental services for each institution in the Department of Correction and the Department of Community Correction, including preventive, diagnostic, and therapeutic measures on both an outpatient and inpatient basis for all types of patients, and to hire physicians and other health care professionals.

(d)(1) The Department of Correction and the Department of Community Correction shall have access to and may obtain copies of all medical records pertaining to any person incarcerated in a facility of either of those departments, including, but not limited to, test results, treatment records, and examination reports generated prior to the commitment of the person to the Department of Correction or the Department of Community Correction or based on medical care received by the person outside the Department of Correction or the Department of Community Correction during the period of the person's incarceration, regardless of whether the person consents to the release of the information.

(2)(A) Any entity or person in possession of such records or information has a duty to disclose it to the Department of Correction or the Department of Community Correction upon written request by the Director of the Department of Correction or his or her designee or the Director of the Department of Community Correction or his or her designee, provided that the Department of Correction and the Department of Community Correction shall put in place the privacy and security provisions required by federal law and provide assurances of compliance, in writing, to the entity or person to whom the written request is made.

(B) Additionally, the requesting entity or person shall provide assurances in the written request that provisions of state laws which require heightened security and privacy will be complied with.

(3) Any information obtained pursuant to this section shall be used only for treatment purposes, to enable the Department of Correction and the Department of Community Correction to assign the incarcerated person to the correct unit or to enable the Department of Correction or the Department of Community Correction to file insurance claims, if applicable.

(4) Any hospital, clinic, medical office, or other such entity and the owners, officers, directors, employees, or agents of such entity, or any other person who, in good faith, furnishes any records or information to the Department of Correction or the Department of Community Correction pursuant to this subsection shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed in the absence of this subsection.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 11; A.S.A. 1947, § 46-150; Acts 1993, No. 884, § 1; 1995, No. 291, § 1; 2001, No. 161, § 1.

Cross References. Correctional facilities, § 12-28-101.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Management, 24 U. Ark. Little Rock L. Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency Rev. 501.

CASE NOTES

Cited: Pennington v. State, 260 Ark. 844, 545 S.W.2d 72 (1977).

12-29-402. Physical examination — Assignment to labor.

(a) All prisoners committed to the Department of Correction shall be given a physical examination initially upon arrival and then as often as determined by medical staff of the department.

(b) Inmates shall be assigned to labor as shall be fitting, with due consideration being given to their physical condition.

History. Acts 1943, No. 157, § 3; 1981, No. 59, § 2; A.S.A. 1947, § 46-138.

12-29-403. Disabled convicts — Duty of physician.

(a)(1) Each new inmate committed to the Department of Correction shall be given a medical examination during the intake process.

(2)(A) During the medical examination required under subdivision (a)(1) of this section, the medical provider shall determine what restrictions if any shall be placed upon the inmate's work assignments.

(B) Restrictions placed upon an inmate's work assignments under subdivision (a)(2)(A) of this section shall be updated as medically necessary.

(b) The department shall not assign an inmate to a work assignment that conflicts with a restriction determined by the medical provider for the department under subdivision (a)(2) of this section.

(c) Whenever the medical provider updates the restrictions under subdivision (a)(2) of this section, the department shall adjust the inmate's work assignments as necessary to comply with the updated restrictions.

History. Acts 1893, No. 76, § 34, p. 121; C. & M. Dig., § 9665; Pope's Dig., § 12705; A.S.A. 1947, § 46-151; Acts 2009, No. 208, § 1.

Amendments. The 2009 amendment rewrote the section.

12-29-404. Incurable diseases.

(a) When, in the independent opinions of a prison physician and a consultant physician from the community, an inmate has an incurable illness which, on the average, will result in death within twelve (12) months, or when an inmate is permanently physically or mentally incapacitated to the degree that the community criteria are met for placement in a nursing home, rehabilitation facility, or similar setting providing a level of care not available in the Department of Correction or the Department of Community Correction, the Director of the Department of Correction or the Director of the Department of Community Correction shall make these facts known to the Parole Board.

(b)(1) The board shall assemble or request all such information as is germane to making a decision.

(2) If the facts warrant, the board may make the inmate eligible for immediate transfer to parole supervision.

History. Acts 1893, No. 76, § 35, p. § 12706; A.S.A. 1947 § 46-152; Acts 1991, 121; C. & M. Dig., § 9666; Pope's Dig., No. 771, § 1; 1995, No. 290, § 1.

12-29-405. Inmates with mental illness.

(a) The Department of Correction is authorized to develop in-house due process procedures as approved by the Board of Corrections in accordance with United States Supreme Court guidelines for the voluntary or involuntary treatment of inmates with mental illness at the facilities and programs of the Mental Health Services Section of the Division of Health Treatment Services of the Department of Correction.

(b)(1) While the inmate is in treatment, the inmate's sentence shall continue to run.

(2) If an inmate's sentence expires while in treatment, the department shall release the inmate or pursue involuntary admission under the appropriate procedures prescribed by existing laws governing the involuntary treatment of individuals with mental illness.

History. Acts 1981, No. 507, §§ 1, 2; A.S.A. 1947, §§ 46-153.1, 46-153.2; Acts 1993, No. 884, §§ 2, 3.

12-29-406. Treatment for deviant sexual behavior.

(a) The purpose of this section is to enable the Department of Correction to establish a core program that will utilize services of medical and mental health providers in the community to provide intensive treatment of inmates with paraphilia, commonly known as sexual deviations, during their incarceration to increase their chance of returning to society successfully upon their release.

(b)(1) The Mental Health Services Section of the Division of Health Treatment Services of the Department of Correction is authorized to establish and maintain a program for intensive treatment for control of deviant sexual behavior of inmates in a specialized treatment setting

and to cooperate with the medical services provider in screening for sexually transmitted diseases as part of this program.

(2) The department may develop the program in such a manner as to utilize outside professionals from the medical and mental health fields to provide both teaching and training opportunities.

(c) The section shall adopt, promulgate, and enforce such rules, regulations, policies, and standards as may be necessary to carry out the intent and purposes of this section.

History. Acts 1987, No. 777, §§ 1-3.

SUBCHAPTER 5 — STATE PRISON INMATE CARE AND CUSTODY REIMBURSEMENT ACT

SECTION.

12-29-501. Title.

12-29-502. Definitions.

12-29-503. Monthly reports on prisoners
— Investigation.

12-29-504. Reimbursement proceedings
— Appointment of guardian.

SECTION.

12-29-505. Duty to furnish information.

12-29-506. Duties of Attorney General —
Assistance.

12-29-507. Deposit of recovered moneys
— Payment of costs.

CASE NOTES

Constitutionality.

This subchapter violates the Supremacy Clause of the United States Constitution because it permits the state to

attach funds that federal law exempts from legal process. *Bennett v. Arkansas*, 485 U.S. 395, 108 S. Ct. 1204, 99 L. Ed. 2d 455 (1988).

12-29-501. Title.

This subchapter may be known and cited as the “State Prison Inmate Care and Custody Reimbursement Act”.

History. Acts 1981, No. 715, § 1; A.S.A. 1947, § 46-1701.

12-29-502. Definitions.

As used in this subchapter:

(1) “Board” means the Board of Corrections;

(2) “Cost of care” means the cost to the Department of Correction for providing room, board, clothing, medical, and other normal living expenses of inmates in the department, as determined from time to time by the board;

(3) “Director” means the Director of the Department of Correction; and

(4) "Estate" means any tangible or intangible properties, real or personal, belonging to or due an inmate confined to an institution of the department, including income or payments to the inmate from social security, previously earned salary or wages, bonuses, annuities, pensions, or retirement benefits, or any source whatsoever.

History. Acts 1981, No. 715, § 2; A.S.A. 1947, § 46-1702.

CASE NOTES

Recovery from Estate.

The plain language of this section reflects, in defining "estate," that the state is

permitted to recover from an inmate's estate, whatever it might be. *Burns v. State*, 303 Ark. 64, 793 S.W.2d 779 (1990).

12-29-503. Monthly reports on prisoners — Investigation.

(a)(1) The Director of the Department of Correction shall forward to the Attorney General a list containing the name of each prisoner in the respective penal facilities of the Department of Correction, the county from which he or she was sentenced, the term of the sentence, the date of admission, together with all information available to the department on the financial responsibilities of the prisoner.

(2) The report shall be made on forms to be agreed upon by the director and the Attorney General or his or her designated employee and shall be made on or before the tenth day of each month.

(b) The Attorney General shall investigate or cause to be investigated all such reports furnished by the department for the purpose of securing reimbursement for the expenses of the State of Arkansas for the cost of care of the prisoners.

History. Acts 1981, No. 715, § 3; A.S.A. 1947, § 46-1703.

CASE NOTES

Constitutionality.

There is a rational connection between Act 715 of 1981, as codified in this section and § 12-29-504, and the nonpunitive goal of reimbursement to the state for care and custody expenses from state prison

inmates. Act 715 is not unconstitutional as ex post facto law as it is not focused on the crimes committed by defendant, nor is it additional punishment. *Burns v. State*, 303 Ark. 64, 793 S.W.2d 779 (1990).

12-29-504. Reimbursement proceedings — Appointment of guardian.

(a)(1) Whenever it shall be found that any person has been admitted to an institution of the Department of Correction as a prisoner, the Attorney General or the prosecuting attorney of the county from which the person was so sentenced shall petition the circuit court of the county from which the person was sentenced if the person or prisoner pos-

sesses any estate or becomes possessed of any estate while he or she remains in the institution.

(2) The petition shall:

(A) State that the person is a prisoner in a penal facility of the department;

(B) State that the Attorney General or prosecuting attorney has good reason to believe and does believe that the prisoner has an estate;

(C) Pray for the appointment of a guardian of the person if a guardian has not already been so appointed; and

(D) Pray that the estate may be subjected to payment to the state of the expenses paid and to be paid by the state on behalf of the person as a prisoner.

(b)(1) The court shall thereupon issue a citation to show cause why the prayer of the petitioner should not be granted.

(2) If the prisoner has a guardian, the petition shall be served upon the guardian.

(3) If the prisoner has no guardian, the petition shall be served upon the prisoner by delivering a copy personally, or by registered mail to the warden or head of the penal institution where the prisoner is being detained, at least fourteen (14) days before the date of the hearing.

(4) The court may appoint a guardian of the person or prisoner.

(c)(1)(A) At the time of the hearing, if it appears that the person or prisoner has an estate that ought to be subject to the claim of the state, the court, without further notice, shall appoint a guardian of the person and estate of the prisoner if the court deems one necessary for the protection of the rights of all parties concerned.

(B)(i) The court shall make an order requiring the guardian or any person or corporation possessing the estate belonging to the prisoner to appropriate and apply the estate or such part thereof, as may appear to be proper toward reimbursing the state, to the payment of the expenses so far incurred by the state on behalf of the prisoner and a part thereof towards reimbursing the state for the future expenses that it must pay on the prisoner's behalf.

(ii) This reimbursement shall not be in excess of the per capita cost of maintaining prisoners in the institution in which the prisoner is an inmate.

(2)(A) However, before issuing any order under this subchapter providing for payments from the estate of the prisoner for his or her cost of care while confined to an institution of the department, the court shall take into consideration and make allowances for the maintenance and support of the spouse, dependent children, or other persons having a moral or legal right to support and maintenance out of the estate of the prisoner.

(B) The court shall take those factors into consideration in determining the amount to be paid, if any, from the estate of the prisoner for his or her cost of care at the department.

(d)(1) If a guardian, person, or corporation shall neglect or refuse to comply with the order, the court shall cite him or her to appear before

the court at a time as it may direct and to show cause why he or she should not be sentenced for contempt of court.

(2) As an additional remedy, the Attorney General or prosecuting attorney may enforce payment of the sums provided in the original order by a proper action in the name of the state.

(3) If, in the opinion of the court, the estate of the prisoner is sufficient to pay the cost of the proceedings, the estate shall be made liable therefor by order of the court.

(e)(1) The proceedings provided for by this section may be begun at any time after admittance to a penal facility of the department.

(2) Recovery may be had for the expenses incurred on behalf of a person or prisoner during the entire period the person has been confined as a prisoner in a penal facility of the department.

History. Acts 1981, No. 715, § 4; A.S.A. 1947, § 46-1704.

CASE NOTES

Constitutionality.

There is a rational connection between Act 715 of 1981, as codified in this section and § 12-29-503, and the nonpunitive goal of reimbursement to the state for care and custody expenses from state prison

inmates. Act 715 is not unconstitutional as ex post facto law as it is not focused on the crimes committed by defendant, nor is it additional punishment. *Burns v. State*, 303 Ark. 64, 793 S.W.2d 779 (1990).

12-29-505. Duty to furnish information.

It shall be the duty of the sentencing judge, the county sheriff of the county, the Director of the Department of Correction, and the warden or administrative head of the penal facility in which the person or prisoner is confined to furnish on inquiry to the Attorney General or prosecuting attorney all information and assistance possible to enable the Attorney General or prosecuting attorney to secure reimbursement for the cost of care of the person or prisoner by the State of Arkansas.

History. Acts 1981, No. 715, § 5; A.S.A. 1947, § 46-1705.

12-29-506. Duties of Attorney General — Assistance.

(a) It shall be the duty of the Attorney General to enforce the provisions of this subchapter.

(b) However, the Attorney General may refer to the prosecuting attorney of the county from which the inmate in the Department of Correction was sentenced, or to the prosecuting attorney of the county in which any property or estate of any such inmate is located, to investigate or assist in legal proceedings to obtain the reimbursements for the cost of care of such prisoners, as authorized in this subchapter.

History. Acts 1981, No. 715, § 7; A.S.A. 1947, § 46-1707.

12-29-507. Deposit of recovered moneys — Payment of costs.

(a)(1) All moneys recovered for the cost of care of prisoners in a facility of the Department of Correction under the provisions of this subchapter shall be deposited into the State Treasury.

(2) The Treasurer of State shall credit the moneys to the appropriate fund established by law from which appropriations to the department are made for inmate care and custody at the department.

(b) However, the cost of making any investigation necessary to secure the reimbursements provided under this subchapter shall be paid from the reimbursement secured under this subchapter in those instances in which the General Assembly has not otherwise provided funds to defray the cost of the investigations.

History. Acts 1981, No. 715, § 6; A.S.A. 1947, § 46-1706.

Cross References. State General Government Fund, § 19-5-302.

SUBCHAPTER 6 — SATISFACTION OF RESTITUTION ORDERS THROUGH DAMAGE AWARDS**SECTION.**

12-29-601. Compensatory damages paid to satisfy restitution orders.

SECTION.

12-29-602. Immunity not affected.

12-29-601. Compensatory damages paid to satisfy restitution orders.

(a) Any compensatory damages after payment of attorney's fees and costs awarded to a prisoner in connection with a civil action brought against any state or local jail, prison, or correctional facility, or against any official or agent of such jail, person, or correctional facility, shall be paid directly to satisfy any outstanding restitution orders pending against the prisoner.

(b) The remainder of any such award after full payment of all pending restitution orders shall be forwarded to the prisoner.

History. Acts 1997, No. 524, § 1.

12-29-602. Immunity not affected.

The provisions of this subchapter are not intended to in any way affect the immunity from suit granted to state officials and employees under § 19-10-305 or to the state and its official agencies under Arkansas Constitution, Article 5, § 20.

History. Acts 1997, No. 524, § 2.

CHAPTER 30

STATE INMATE INDUSTRIES AND LABOR

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. PRISON-MADE GOODS ACT OF 1967.
- 3. FARMS.
- 4. WORK-STUDY RELEASE.
- 5. PRIVATIZED PRISON-MADE GOODS.

Publisher's Notes. Acts 1933, No. 30, § 37, provided, in part, that laws not inconsistent with, or specifically repealed by, Acts 1933, No. 30 should apply to the Board of Penal Institutions.

Acts 1968 (1st Ex. Sess.), No. 50, § 44,

provided, in part, that all laws relating to the State Penitentiary which were not specifically repealed by, or in conflict with, Acts 1968 (1st Ex. Sess.), No. 50 would apply to the Department of Correction.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-30-101. Bartering products of institutions.
- 12-30-102. Buying and selling products of institutions.

SECTION.

- 12-30-103. Workcraft program.
- 12-30-104. Sale of workcraft items.
- 12-30-105. Marketing contracts.

Cross References. Inmate welfare funds, § 12-29-107.

Effective Dates. Acts 1975, No. 361, § 4: Mar. 10, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the exchange of materials, goods, and products between the Department of Correction in this state and correctional institutions of other states and of the federal government would be of benefit to the correctional program of this state and would provide opportunities for obtaining the processing of raw materials and for the obtaining of goods and products produced by correctional institutions of other states or of federal correctional institutions, in exchange for goods or products produced in the correctional program of this state, and that the immediate passage of this act is necessary in order to enable the Board of Correction to enter into such contracts and agreements and thereby obtain the benefit of this program for the correctional system of this state. Therefore, an emer-

gency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 108, § 5: Feb. 19, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act is immediately necessary to allow the Board of Correction to enter into contracts with other states and the federal government for the buying and selling of commodities thereby creating additional revenues which are severely needed by that department. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force after its passage and approval."

Acts 1981, No. 118, § 3: Feb. 19, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law the sale of Department of Correction handi-

craft products is much too restrictive; that this act expands the market for such product which in turn provides more money which will be put into the Inmate Welfare Fund. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 48, § 5: Nov. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Department of Correction is in immediate need of

additional revenues for its Industry Program; this Act will assist the Department in generating additional revenues for their Industry Program; and that this Act should go into effect immediately in order to grant the Department of Correction the necessary authority to generate additional revenues for its Industry Program. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

12-30-101. Bartering products of institutions.

(a)(1) In the passage of this section, the General Assembly is cognizant of the diversity of agricultural, livestock, processing, manufacturing, fabricating, and production resources of penal and correctional institutions in this state, in other states, and of the federal government.

(2) It is recognized that each of the correctional institutions may carry on a program of production, industries, manufacturing, and processing essential to its own needs and requirements, and that in a number of instances the institutions could share, through trade and barter agreements, their production, materials, and goods for the mutual benefit and advantage of their respective institutions.

(b) It is the intent of this section to enable the Board of Corrections of this state to enter into agreements with the managing boards or commissions of correctional institutions of other states, or with appropriate federal officials having custody or control of federal correctional institutions, for the exchange of raw materials, goods, and products in accordance with terms and agreements which the respective institutions find to be advantageous and of benefit to their respective institutions and programs.

(c)(1) The board, with the approval of the Governor, is authorized to enter into contracts, compacts, or agreements with the appropriate governing officials of correctional institutions of other states or of the federal government for the trading or bartering of raw materials, goods, and products produced by and belonging to their respective institutions.

(2) This may be done in accordance with the terms and conditions the board and the governing officials of correctional institutions of other states or of the federal government may deem advantageous and appropriate for their respective institutions and programs.

(d) The agreements may include matters such as the exchange of raw materials for finished products produced in correctional institutions or

the processing of raw materials into finished products in exchange for a portion of the raw materials processed.

(e) Copies of all such agreements, compacts, or contracts entered into with correctional institutions of other states or with the federal government, as authorized in this section, shall be filed with the Auditor of State and the Chief Fiscal Officer of the State.

(f) A complete set of books and records shall be kept with respect to all transactions, deliveries, and obligations under each compact, contract, or agreement. Copies shall be filed with the Auditor of State and the Chief Fiscal Officer of the State and shall be available to public inspection during all normal business hours.

(g) The board may make reasonable rules and regulations governing the Department of Correction in the administration of contracts, compacts, or agreements made under the provisions of this section.

History. Acts 1975, No. 361, §§ 1, 2;
A.S.A. 1947, §§ 46-250, 46-250n.

12-30-102. Buying and selling products of institutions.

(a) The Board of Corrections is authorized to enter into contracts, compacts, or agreements with the appropriate governing officials of agencies of other states or of the federal government for the buying and selling of raw materials, goods, and products produced by and belonging to their respective institutions in accordance with such terms and conditions as the board and the governing officials of correctional institutions of other states or the federal government may deem advantageous and appropriate for their respective institutions and programs.

(b) These agreements may include matters such as the buying and selling of raw materials for finished products produced in correctional institutions or for the processing of materials into finished products.

(c) Copies of all such agreements, compacts, or contracts entered into with correctional institutions of other states, or with the federal government as authorized in this section, shall be filed with the Chief Fiscal Officer of the State.

(d)(1) A complete set of books and records shall be kept with respect to all transactions, deliveries, and obligations under each compact, contract, or agreement.

(2) Copies shall be filed with the Chief Fiscal Officer of the State and shall be available to public inspection during all normal business hours.

(e) The board may make reasonable rules and regulations governing the Department of Correction in the administration of contracts, compacts, or agreements made under the provisions of this section.

History. Acts 1981, No. 108, §§ 1-3;
A.S.A. 1947, §§ 46-251 — 46-253.

12-30-103. Workcraft program.

(a) The Department of Correction and the Department of Community Correction are authorized to operate a workcraft program that offers instruction and training for their inmates, thereby helping prepare them for employment after incarceration.

(b) The Board of Corrections is authorized to establish rules and regulations for operating the program, which shall include, but not be limited to, the following:

- (1) Acquisition of necessary machinery, materials, and equipment;
- (2) Establishment of procedures for public sale of inmate-produced craft;
- (3) Inmate eligibility for participation in the workcraft program; and
- (4) Establishment of a workcraft program revolving fund.

History. Acts 1975, No. 702, § 1; A.S.A. 1947, § 46-248; Acts 1995, No. 205, § 1; 1995, No. 292, § 1.

12-30-104. Sale of workcraft items.

(a)(1) The sale of items produced in the Department of Correction or the Department of Correction workcraft programs may be through one (1) or more retail outlets operated by the Department of Correction or the Department of Community Correction.

(2) The public availability of these items for sale will be made known through advertising or other public marketing communications, or both.

(b)(1) Prices of workcraft items shall be sufficient to cover production cost.

(2) A percentage of sale proceeds, as determined by rules and regulations, will accrue to the individual product-creating inmate's account and the remainder to a workcraft program revolving fund.

History. Acts 1975, No. 702, § 2; 1981, No. 118, § 1; A.S.A. 1947, § 46-249; Acts 1995, No. 205, § 2; 1995, No. 292, § 2.

12-30-105. Marketing contracts.

(a)(1) The Department of Correction may enter into marketing contracts with dealers, retailers, distributors, and manufacturer representatives permitting them to market and sell all products and services produced by the department industry program in accordance with existing laws and state purchasing regulations.

(2) The Industry Division of the department will be responsible for all billing of purchased products and services to ensure that only customers authorized by law are making said purchases.

(b) Reimbursement to companies on contract for marketing of said products and services will be based on regulations established by the Board of Corrections.

History. Acts 1989 (3rd Ex. Sess.), No. 48, §§ 1, 2.

SUBCHAPTER 2 — PRISON-MADE GOODS ACT OF 1967

SECTION.	SECTION.
12-30-201. Title.	12-30-208. [Repealed.]
12-30-202. Legislative intent.	12-30-209. Order of distribution.
12-30-203. Establishment of prison industries.	12-30-210. Annual statements.
12-30-204. Purchase of goods by state and local agencies.	12-30-211. Rules and regulations.
12-30-205. Purchase of goods by nonprofit organizations and other individuals.	12-30-212. Auditor bound by voucher or warrant.
12-30-206. Prices.	12-30-213. Intentional violations.
12-30-207. Catalogues.	12-30-214. Appropriations — Contracts.
	12-30-215. Purchase for construction or operation of prison.

Effective Dates. Acts 1985, No. 825, § 3: Apr. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that inmate produced goods could be readily sold to nonprofit organizations thereby producing a source of revenue which is badly needed to help fund the Arkansas prison system; that this act would authorize such a procedure. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 944, § 6: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution

of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

12-30-201. Title.

This subchapter may be cited as the "Prison-Made Goods Act of 1967".

History. Acts 1967, No. 473, § 2; A.S.A. 1947, § 46-235.

12-30-202. Legislative intent.

Whereas, the means now provided for the employment of prison labor are inadequate to furnish a sufficient number of prisoners with diversified employment, it is declared to be the intent of this subchapter:

(1) To further provide more adequate, regular, and suitable employment for the prisoners of this state, consistent with proper penal purposes;

(2) To further utilize the labor of prisoners for self-maintenance and for reimbursing this state for expenses incurred by reason of their crimes and imprisonment; and

(3) To effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom.

History. Acts 1967, No. 473, § 1; A.S.A. 1947, § 46-234.

CASE NOTES

Cited: Wells v. Heath, 274 Ark. 45, 622 S.W.2d 163 (1981).

12-30-203. Establishment of prison industries.

The Board of Corrections is authorized to purchase, in the manner provided by law, equipment, raw materials, and supplies and to engage supervisory personnel necessary to establish and maintain for this state, at the Department of Correction or any penal farm or institution under control of this board, industries for the utilization of services of prisoners in the manufacture or production of articles or products as may be needed for the construction, operation, maintenance, or use of any office, department, institution, or agency supported in whole or in part by this state and the political subdivisions thereof.

History. Acts 1967, No. 473, § 3; A.S.A. 1947, § 46-236.

12-30-204. Purchase of goods by state and local agencies.

(a)(1) All offices, departments, institutions, and agencies of this state which are supported in whole or in part by this state, and all political subdivisions of this state, may purchase, at the discretion of the office, department, institution, or agency, from the Board of Corrections any products required by the offices, departments, institutions, agencies, or political subdivisions of this state produced or manufactured by the Department of Correction utilizing prison labor as provided for by this subchapter.

(2)(A)(i) The Revenue Division of the Department of Finance and Administration may request that the board propose the purchase of license plates which are necessary as evidence of registration of motor vehicles and trailers to be issued by the division's revenue offices.

(ii) The license plates would be produced or manufactured by the Department of Correction utilizing prison labor.

(B) The provisions of this subdivision (a)(2) shall be applicable beginning with the contracts for purchase or any purchases of license plates which are required after the expiration of any contracts for the purchase or manufacture of license plates that are in effect.

(b) Such offices, departments, institutions, and agencies shall not be required to submit an invitation for bid to the board for all products known to be produced or manufactured by the Department of Correction utilizing prison labor as provided for by this subchapter.

(c)(1) The Department of Correction may enter into an agreement with the Old State House Commission to utilize inmate labor in the production or manufacture of items for resale by the Old State House Museum.

(2) Except as provided in subdivision (c)(3) of this section, the proceeds from the sales of the items produced or manufactured under subdivision (c)(1) of this section shall be used by the Old State House Museum to:

(A) Develop exhibits and programs about the history of the Department of Correction; or

(B) Maintain the Old State House Museum's collection of the Department of Correction artifacts.

(3) The Department of Correction and the commission may by rule modify the use of the proceeds from the sale of items produced or manufactured under subdivision (c)(1) of this section.

(d) All purchases made pursuant to this section shall be made through the Department of Correction's purchasing department, upon requisition by the proper authority of the office, department, institution, agency, or political subdivision of this state requiring the articles or products.

History. Acts 1967, No. 473, §§ 4, 5; 1985, No. 825, § 1; A.S.A. 1947, §§ 46-237, 46-238; Acts 1995, No. 944, § 1; 1997, No. 1284, § 1; 2009, No. 307, § 1.

A.C.R.C. Notes. As enacted by Acts 1997, No. 1284, § 1, subdivision

(a)(2)(A)(i) began: "On and after January 1, 1998."

Amendments. The 2009 amendment inserted (c), and redesignated the remaining text as (d).

12-30-205. Purchase of goods by nonprofit organizations and other individuals.

(a) A nonprofit organization may purchase goods produced by the Department of Correction's Industry Division as provided for by this subchapter upon the condition that the goods may not be resold for profit.

(b)(1) Goods produced by the division as provided for by this subchapter, excluding furniture and seating, may also be purchased by:

(A) Current employees and retirees of the Department of Correction;

(B)(i) All employees of the offices, departments, institutions, school districts, and public agencies in this state.

(ii) Subdivision (b)(1)(B)(i) of this section shall not include members of the General Assembly; and

(C) Current and former members of the Board of Corrections.

(2) Goods purchased by an individual under subdivision (b)(1) of this section shall be for personal use only and not for resale.

History. Acts 1967, No. 473, § 4; 1985, No. 825, § 1; A.S.A. 1947, § 46-237; Acts 1999, No. 1375, § 1; 2005, No. 1182, § 1; 2009, No. 502, § 1.

Amendments. The 2005 amendment, in (a), deleted “also” following “may” and substituted “Department of Correction’s Industry Division” for “Department of Correction utilizing prison labor”; and re-wrote (b).

The 2009 amendment, in (b)(1), inserted “excluding furniture and seating” in the introductory language, substituted “school districts, and public agencies in this state” for “and agencies of this state which are supported in whole or in part by this state” in (b)(1)(B)(i), and made related changes.

12-30-206. Prices.

(a) The Board of Corrections shall fix and determine the prices at which all articles or products manufactured or produced shall be furnished.

(b) The prices shall be uniform and nondiscriminating to all and shall not exceed the wholesale market prices.

History. Acts 1967, No. 473, § 9; A.S.A. 1947, § 46-242.

12-30-207. Catalogues.

(a) The Board of Corrections shall cause to be prepared, at such times as the board may determine, catalogues containing the description of all articles and products manufactured or produced by the board pursuant to the provisions of this subchapter.

(b) Copies of the catalogue shall be sent by the board to all offices, departments, institutions, and agencies of this state and made accessible to all political subdivisions of this state referred to in § 12-30-204.

History. Acts 1967, No. 473, § 7; A.S.A. 1947, § 46-240.

12-30-208. [Repealed.]

Publisher’s Notes. This section, concerning needs estimates by state and local agencies, was repealed by Acts 1995, No. 944, § 2. The section was derived from

Acts 1967, No. 473, § 7; A.S.A. 1947, § 46-240. For present law, see § 12-30-204.

12-30-209. Order of distribution.

The articles or products manufactured or produced by prison labor in accordance with the provisions of this subchapter shall be devoted:

(1) First, to fulfilling the requirements of the offices, departments, institutions, and agencies of this state that are supported in whole or in part by this state; and

(2) Second, to supply the political subdivisions of this state with the articles and products.

History. Acts 1967, No. 473, § 8; A.S.A. 1947, § 46-241.

12-30-210. Annual statements.

(a) The Director of the Department of Correction and the manager or authorities, by whatever name known, having charge of the penal institutions of this state, shall annually make a full detailed statement of:

(1) All materials, machinery, or other property procured, and the cost thereof, and the expenditures made during the last preceding year for manufacturing purposes, together with a statement of all materials then on hand to be manufactured, or in process of manufacture, or manufactured;

(2) All machinery, fixtures, or other appurtenances for the purpose of carrying on the labor of the prisoners; and

(3) The earnings realized during the last preceding year as the proceeds of the labor of the prisoners at the Department of Correction or penal institutions of this state.

(b) The statement shall be verified by the oath of the manager or authorities having charge of penal institutions to be just and true and shall be forwarded to the Board of Corrections by the manager or authorities having charge within thirty (30) days after the end of the last preceding year.

History. Acts 1967, No. 473, § 10; A.S.A. 1947, § 46-243.

12-30-211. Rules and regulations.

The Board of Corrections shall have power and authority to prepare and promulgate rules and regulations which are necessary to give effect to the provisions of this subchapter with respect to matters of administration and procedure respecting them.

History. Acts 1967, No. 473, § 11; A.S.A. 1947, § 46-244.

12-30-212. Auditor bound by voucher or warrant.

No voucher, certificate, or warrant issued on the Auditor of State by any office, department, institution, or agency shall be questioned by the Auditor of State or by the Treasurer of State on the grounds that this subchapter has not been complied with by the office, department, institution, or agency.

History. Acts 1967, No. 473, § 6; A.S.A. 1947, § 46-239.

12-30-213. Intentional violations.

If an intentional violation of this subchapter by any office, department, institution, or agency continues, after notice from the Governor to desist, then the intentional violation shall constitute a malfeasance in office and shall subject the person or persons responsible for this violation to suspension or removal from office.

History. Acts 1967, No. 473, § 6; A.S.A. 1947, § 46-239.

12-30-214. Appropriations — Contracts.

(a) Incident to the employment of prisoners as provided in this subchapter, the Board of Corrections is authorized to:

- (1) Erect buildings;
- (2) Purchase, install, or replace equipment;
- (3) Procure tools, supplies, and materials;
- (4) Employ personnel; and
- (5) Otherwise defray necessary expenses.

(b)(1) To further aid the purposes in subsection (a) of this section, the board is empowered to enter into contracts and agreements with any person or persons upon a self-liquidating basis respecting the acquisition and purchase of any equipment, tools, supplies, and materials to the end that they may be paid for over a period of not exceeding ten (10) years.

(2) The aggregate amount of the purchases or acquisitions are not to exceed five hundred thousand dollars (\$500,000) unless specifically approved by the Governor with the amounts to be payable solely out of the revenues derived from the activities authorized by this subchapter.

(c) Nothing in this section shall be construed or interpreted to authorize or permit the incurring of a state debt of any kind or nature as contemplated by the Arkansas Constitution in relation to the debt.

History. Acts 1967, No. 473, § 12; A.S.A. 1947, § 46-245.

CASE NOTES

Repeal by Implication.

The effect of the appropriation in Acts 1977, No. 713, in transferring general revenues to the Prison Industry Account, was to repeal by implication the provision in this section requiring that purchases be payable solely out of revenues derived

from the industry since, if two legislative acts relating to the same subject are in conflict with each other, the later act controls. *Wells v. Heath*, 274 Ark. 45, 622 S.W.2d 163 (1981).

Cited: *Wells v. Heath*, 269 Ark. 473, 602 S.W.2d 665 (1980).

12-30-215. Purchase for construction or operation of prison.

Any contractor or subcontractor who has entered into a contract with or for the benefit of a state board, state agency, or state-supported institution of higher education for constructing, equipping, or operating, in whole or in part, any facility of the board, agency, or institution may purchase goods produced by the Department of Correction and the Department of Community Correction for use in the performance of the contract.

History. Acts 1997, No. 877, § 1; 1999, No. 145, § 1.

SUBCHAPTER 3 — FARMS

SECTION.

- 12-30-301. Farming and livestock activities.
- 12-30-302. [Repealed.]
- 12-30-303. Cooperation of Cooperative Extension Service.
- 12-30-304. Products — Purchase by state institutions.

SECTION.

- 12-30-305. Sales by director.
- 12-30-306. Purchases, expenditures, and sales — Compliance with laws.
- 12-30-307. Payment for food used by department.
- 12-30-308. Lease or rental of land.

Publisher’s Notes. Acts 1991, No. 343, § 6, provided: “The Department of Corrections Farm Advisory Board created under Arkansas Code § 12-30-302 is abolished”.

Cross References. Disabled convicts, physician’s duties, § 12-29-403.

Physical examinations, assignment to labor, § 12-29-402.

Effective Dates. Acts 1933, No. 30, § 38: Feb. 14, 1933. Emergency clause provided: “It having been ascertained that the present method of operating the State Penitentiary, penitentiary farms and other state penal institutions, is expensive and cumbersome and that the situation should be remedied as quickly as possible in order to save the taxpayers of Arkansas huge sums of money and to increase the efficiency of the penal institutions, an emergency is declared to exist and this act being necessary for the public peace, health, and safety, an emergency is declared to exist and this act shall be in force from and after its passage and approval.”

Acts 1968 (1st Ex. Sess.), No. 50, § 46: Mar. 1, 1968. Emergency clause provided: “The General Assembly finds that the penal system of the State of Arkansas is in need of immediate reform, in order better

to effectuate the rehabilitation of persons convicted of crime and to make possible their return as useful members of the community, and that the immediate passage of this act is necessary to establish a Department of Correction to effectuate such rehabilitation. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after March 1, 1968.”

Acts 1985, No. 648, § 27: July 1, 1985. Emergency clause provided: “It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1985."

Acts 1987, No. 953, § 31: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the

appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

12-30-301. Farming and livestock activities.

(a) The Department of Correction shall make maximum utilization of the farm lands of the various institutions of the department through the use of modern agricultural machinery, equipment, and technology in producing crops and livestock for use in feeding prisoners and for sale on the market to produce income for the maintenance and operation of the institutions of the department.

(b) The Director of the Department of Correction, with the approval of the Board of Corrections, shall promulgate necessary rules and regulations for the operation of the farming and livestock activities of the various institutions of the department, the employment of personnel, the assignment of inmate labor, and other activities as may be reasonably necessary to accomplish the purposes as provided in this section.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 18; A.S.A. 1947, § 46-219.1.

12-30-302. [Repealed.]

Publisher's Notes. This section, concerning the Department of Correction Farm Advisory Board, was repealed by Acts 1991, No. 343, § 6. The section was derived from Acts 1983, No. 841, §§ 1-4; A.S.A. 1947, § 46-254 — 46-257.

Acts 1991, No. 343, § 6, provided: "The Department of Corrections Farm Advisory Board created under Arkansas Code § 12-30-302 is abolished."

12-30-303. Cooperation of Cooperative Extension Service.

It shall be the duty of the University of Arkansas Cooperative Extension Service to cooperate with the Director of the Department of Correction to the end that proper crops may be planted to the best advantage and proper methods of soil treatment may be utilized and proper methods of canning and preserving may be used to the best advantage.

History. Acts 1933, No. 30, § 23; Pope's Dig., § 12690; A.S.A. 1947, § 46-216.

12-30-304. Products — Purchase by state institutions.

(a) It shall be the duty of the various state institutions to purchase, as far as possible, products grown or produced by the state upon its Department of Correction and other farms, giving the state preference wherever possible.

(b)(1) Sales shall be made at prevailing market prices and all proceeds thereof shall be deposited with the Treasurer of State to the credit of the Department of Correction Farm Fund.

(2) However, the Director of the Department of Finance and Administration, by proper bookkeeping entries, may charge the institution so purchasing and credit the Department of Correction account with such amount.

History. Acts 1933, No. 30, § 22; Pope's Dig., § 12667; A.S.A. 1947, § 46-219. affected by the Prison-Made Goods Act of 1967, § 12-30-201 et seq.

A.C.R.C. Notes. This section may be

12-30-305. Sales by director.

(a) The Director of the Department of Correction, by and with the consent and approval of the Board of Corrections, shall make all sales of commodities and articles produced and offered for sale by the various penal institutions under his or her supervision.

(b) The director shall keep a complete and detailed record of all sales and shall immediately deposit all moneys received therefrom with the Treasurer of State to the credit of the Penal Institution Fund.

(c) The director shall give a bond to be approved by the board as the board may require for the performance of the duties imposed under this section.

History. Acts 1933, No. 30, § 35; Pope's Dig., § 12702; A.S.A. 1947, § 46-222. ant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

A.C.R.C. Notes. The operation of subsection (c) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. This section may be affected by the Prison-Made Goods Act of 1967, § 12-30-201 et seq.

12-30-306. Purchases, expenditures, and sales — Compliance with laws.

(a) All purchases for or in behalf of the Department of Correction and its various institutions shall be in strict compliance with the state purchasing laws and applicable rules and regulations promulgated thereunder.

(b) All expenditures of funds appropriated for the department shall be in accordance with the General Accounting and Budgetary Proce-

dures Law, § 19-4-101 et seq., and other applicable fiscal laws of this state governing expenditure of state funds.

(c) All sales of farm products, livestock, or other products produced in connection with the agriculture and livestock activities at the respective institutions of the department shall be in accordance with the applicable laws of this state governing the advertising for bids and awarding of contracts for the sales.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 17; A.S.A. 1947, § 46-220.1.

12-30-307. Payment for food used by department.

(a) The Department of Correction may make payment from the Department of Correction Inmate Care and Custody Fund Account to the Department of Correction Farm Fund in an amount not to exceed fifty cents (50¢) on each dollar's worth of food produced on the department farm for consumption in the Inmate Care and Custody Program.

(b) The department shall keep appropriate records reflecting farm production and the value of farm-produced products utilized in the Inmate Care and Custody Program and shall keep records of current market values in support of any such payments.

(c) In no event shall the amount received under this section, when combined with any loans forgiven under provisions of other laws, exceed the value of the farm products utilized by the Inmate Care and Custody Program.

History. Acts 1987, No. 953, § 25.

section was derived from Acts 1985, No. 648, § 24.

A.C.R.C. Notes. Former § 12-30-307, concerning payment for food used by Department of Corrections, is deemed to be superseded by this section. The former

Cross References. State General Government Fund, § 19-5-302.

12-30-308. Lease or rental of land.

(a) The Board of Corrections, in its discretion and with the Governor's approval, may cease or abandon the cultivation of any land now owned by the state and under the jurisdiction of the board and may rent or lease the land not cultivated, or abandoned and not needed in the proper operation of the penal system of this state, if they deem the action expedient.

(b)(1) The board, in its discretion and with the Governor's approval, may rent or lease additional lands for the planting and cultivation of crops by convicts.

(2) However, any and all lands rented or leased shall be within five (5) miles of some now established camp or stockade unless the contract or lease shall provide for the erection and maintenance of a new stockade or camp upon the lands rented or leased.

History. Acts 1933, No. 30, § 33; Pope’s Dig., § 12700; A.S.A. 1947, § 46-217.

SUBCHAPTER 4 — WORK-STUDY RELEASE

SECTION.

- 12-30-401. Work and rehabilitative programs — Work-release programs.
- 12-30-402. Establishment of new work-release centers.
- 12-30-403. Rules and regulations generally.

SECTION.

- 12-30-404. Inmates excepted from program.
- 12-30-405. Contracts for inmate labor.
- 12-30-406. Allocation of earnings — Inmate’s funds.
- 12-30-407. Housing of participants.
- 12-30-408. [Repealed.]

Cross References. Disabled convicts, physician’s duties, § 12-29-403.

Physical examinations, assignment to labor, § 12-29-402.

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 50, § 46: Mar. 1, 1968. Emergency clause provided: “The General Assembly finds that the penal system of the State of Arkansas is in need of immediate reform, in order better to effectuate the rehabilitation of persons convicted of crime and to make possible their return as useful members of the community, and that the immediate passage of this act is necessary to establish a Department of Correction to effectuate such rehabilitation. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after March 1, 1968.”

Acts 1971, No. 465, § 3: Mar. 31, 1971. Emergency clause provided: “It has been found and determined by the General Assembly that work-release programs would be of great value, and finds that the immediate passage of this act is necessary to effectuate such programs; therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1977, No. 948, § 27: July 1, 1977. Emergency clause provided: “It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of

this act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977.”

Acts 1981, No. 58, § 7: approved Feb. 12, 1981. Emergency clause provided: “The General Assembly finds that the penal system of the State of Arkansas is in need of immediate reform, in order to better effectuate the rehabilitation of persons convicted of crimes and to make possible their return as useful members of the community, and that the immediate passage of this act is necessary to facilitate these reforms. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage.”

Acts 1983, No. 309, § 5: Mar. 2, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Department of Correction should be encouraged to expand the use of work release programs; and that in order to expand such programs it is necessary to grant the department authority to house inmates outside of Department of Correction units; and that this act is immedi-

ately necessary to grant such authority. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 814, § 3: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Department of Correction should be encouraged to expand the use of work release programs; and that in order to expand such programs it is necessary to grant the department authority to house inmates outside of Department of Correction units; and that this act is immediately necessary to grant such authority. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 648, § 27: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1985."

Acts 1987, No. 953, § 31: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the

effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1991, No. 287, § 5: Feb. 28, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need for additional space to house inmates of the Department of Correction who are participating in the prerelease and work-release programs of the Department; that the Benton Services Center facilities are suitable for housing such inmates in excess of the number currently authorized by law; that this Act is designed to permit the housing of additional inmates at the Benton Services Center facility and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1112, § 5: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that facilities of the Department of Correction are inadequate to house all inmates committed to the custody of the Department of Correction; that it is urgent that the Board of Correction be given authority to take appropriate steps to provide for housing of inmates in facilities other than Department facilities; that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 532 and 550, § 13: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the sentencing policies and standards of the State of Arkansas are in need of immediate reform in order to better provide for a balanced correctional system and to better effectuate the rehabilitation

of persons convicted of crimes and to make possible their return as useful members of the community and passage of this act is necessary to facilitate these reforms. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect, unless provided for otherwise herein, from and after its passage and approval.”

RESEARCH REFERENCES

ALR. Computation of incarceration time under work release or hardship sentences. 28 A.L.R.4th 1265.

CASE NOTES

In General.

Arkansas’ work release statutes and regulations do not create a protectible

liberty interest in participation in work release programs. *Mahfouz v. Lockhart*, 826 F.2d 791 (8th Cir. 1987).

12-30-401. Work and rehabilitative programs — Work-release programs.

(a) All inmates committed to the Department of Correction for institutional care shall be required to participate in the various work programs to which assigned and may be afforded vocational training and rehabilitative opportunities in accordance with rules, regulations, and procedures therefor as promulgated by the Director of the Department of Correction with the approval of the Board of Corrections.

(b) The department may institute “work-release” programs under which the inmates selected to participate in the programs may be gainfully employed or attend school outside of the units maintained by the department, under rules and regulations promulgated by the director with the approval of the board.

History. Acts 1968 (1st Ex. Sess.), No. § 5; 1981, No. 58, § 2; 1983, No. 309, § 1; 50, § 9; 1971, No. 465, § 1; 1977, No. 482, A.S.A. 1947, § 46-117.

CASE NOTES

ANALYSIS

Act 814 Participant.
Liberty Interest.

Act 814 Participant.

Although the Arkansas legislature’s labeling of an Act 814 participant (a work-release participant pursuant to Acts 1983, No. 814, codified as this subchapter) as an “inmate” is not determinative, it does make it reasonable for the Department of Corrections Director, absent authoritative

direction to the contrary, to believe that Act 814 status may be more akin to inmate status (deserving of a prison disciplinary hearing before revocation) than to parolee status (deserving of certain other protections before revocation). *Jackson v. Lockhart*, 7 F.3d 1391 (8th Cir. 1993).

Liberty Interest.

Status in a work-release program is similar to that of parole, and, therefore, the due process clause vests the prisoner with a liberty interest in remaining in the

program; accordingly the prisoner is entitled to due process protection for that interest. *Edwards v. Lockhart*, 908 F.2d 299 (8th Cir. 1990).

12-30-402. Establishment of new work-release centers.

(a) The Community Correction Revolving Fund may borrow from the Budget Stabilization Trust Fund for the establishment of new work-release centers for the Department of Correction.

(b) The loans shall be repaid by the end of the fiscal year in which the loans are made.

History. Acts 1987, No. 953, § 19; 2005, No. 1962, § 50.

A.C.R.C. Notes. Former § 12-30-402, concerning establishment of new work-release centers, is deemed to be superseded by this section. The former section was derived from Acts 1985, No. 648, § 18.

Amendments. The 2005 amendment

inserted the (a) and (b) designations; and in (a) substituted "Community Correction Revolving Fund" for "Community Service Revolving Fund [abolished]," and "may" for "is authorized to."

Cross References. Budget Stabilization Trust Fund, § 19-5-501.

Community Correction Revolving Fund, § 19-6-432.

12-30-403. Rules and regulations generally.

The Board of Corrections and the Director of the Department of Correction will govern the administration of work-release programs with the promulgation of rules, regulations, and procedures subject to the continuing review by the Governor, who shall have the right to revise and rescind any such rules, regulations, and procedures.

History. Acts 1968 (1st Ex. Sess.), No. 5; 1981, No. 58, § 2; 1983, No. 440, § 1; 50, § 9; 1971, No. 465, § 1; 1977, No. 482, 1983, No. 814, § 1; A.S.A. 1947, § 46-117.

12-30-404. Inmates excepted from program.

(a) No person shall be allowed to participate in any work-release program conducted by or for the Department of Correction if convicted of:

- (1) A capital offense;
- (2) Murder in the first degree, § 5-10-102;
- (3) Rape, § 5-14-103;
- (4) Kidnapping, § 5-11-102; or
- (5) Aggravated robbery a second or subsequent time, § 5-12-103.

(b) However, this section shall not apply to persons participating in work-release programs on July 20, 1979.

History. Acts 1979, No. 399, § 1; A.S.A. 1947, § 46-117.1.

12-30-405. Contracts for inmate labor.

The Department of Correction may make contractual arrangements for use of inmate labor by the following prioritized list:

- (1) Other state departments and agencies;

(2) Counties, cities, and school districts; and

(3) Civic organizations, other nonprofit organizations, and private citizens, including, but not limited to, those responsible for the preservation of natural resources or other public works.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1981, No. 58, § 2; 1983, No. 309, § 1; 1983, No. 440, § 1; 1983, No. 814, § 1; A.S.A. 1947, § 46-117.

Cross References. Road work by convicts, § 27-66-601.

12-30-406. Allocation of earnings — Inmate's funds.

(a) Under any work-release program, earnings by the inmate shall be paid directly to the Department of Correction and applied as follows:

(1) The department shall retain an amount to be established by the Director of the Department of Correction which will reasonably compensate the department for the cost of feeding, housing, and supervising the inmate;

(2) The department shall determine if the inmate has persons dependent upon him or her for their support and may remit to such persons that portion of the earnings which the director considers reasonable;

(3)(A) The department shall determine if the inmate has created victims of his or her criminal conduct who are entitled to restitution or reparations for physical injury or loss of or damage to property and may remit to the victim that portion of the earnings which the director considers reasonable.

(B) However, in no case shall the portion of the earnings remitted for restitution be in excess of twenty-five percent (25%) of the inmate's income remaining after deduction for the cost of care, custody, and family support provided for in subdivisions (a)(1) and (2) of this section.

(C) The names and addresses of victims and the amount of restitution to be paid shall be provided to the director by certificate of the trial court in which the inmate was convicted; and

(4) The balance shall be deposited to the account of the inmate.

(b) Inmates may be required to contribute to the support of their dependents who may be receiving public assistance during the period of their commitment if funds credited to them are adequate for that purpose provided that all inmates participating in the work-study release programs shall continue to be housed at a department institution.

(c) The department shall promulgate rules and regulations governing the possession of or use of money by inmates and may prohibit the possession of money by inmates and may establish a system for the custody of all funds belonging to inmates, for the balance of such fund period.

History. Acts 1968 (1st Ex. Sess.), No. 1983, No. 440, § 1; 1983, No. 814, § 1; 50, § 9; 1971, No. 465, § 1; 1977, No. 482, A.S.A. 1947, § 46-117. § 5; 1981, No. 58, § 2; 1983, No. 309, § 1;

12-30-407. Housing of participants.

(a)(1)(A) The Board of Corrections may promulgate rules and regulations to allow the proper classification of inmates to be released to the county sheriffs of approved jail facilities or chiefs of police or other authorized law enforcement officers of city-operated approved jail facilities or community correction centers outside the Department of Correction.

(B)(i) Inmates shall be interviewed to develop a classification of each inmate's skills, work experiences, job background, and education.

(ii) Such inmates are to work at jobs that directly benefit those facilities or a political subdivision and that are related to a particular inmate's background classification and where they are to be under supervision at all times.

(2)(A)(i) County sheriffs, chiefs of police, or other authorized law enforcement officers of approved jail facilities may request assignment of inmates to their approved facilities to perform particular jobs for the facilities or for a political subdivision which are in a particular area of need of the facility or a political subdivision.

(ii) The Department of Correction shall review the requests and shall submit a list of inmates with appropriate skills or backgrounds for the particular job needs of the approved facility in accordance with the Department of Correction's classification of inmates' skills and backgrounds.

(iii) County sheriffs, chiefs of police, or other authorized law enforcement officers will choose inmates from the submitted list which are appropriate for the needs of their facilities or a political subdivision.

(B) County sheriffs, chiefs of police, or other authorized law enforcement officers shall not request the assignment of a particular inmate to their approved facility and may refuse the assignment of a particular inmate.

(3)(A) An inmate shall not be released to approved jail facilities until notification of the release is first sent to the county sheriff of the county from which the inmate was tried and convicted, the prosecuting attorney's office who convicted the inmate, and, upon a written request, to the victim or victim's family.

(B) Notification of the victim or victim's family shall be done by mail to the last known address supplied to the department in accordance with department policies.

(4)(A) Inmates so released shall be entitled to credit on their sentences under the meritorious classification system of the department.

(B) However, no inmate shall be eligible to be released to the county sheriff, chief of police, or other authorized law enforcement

officer of an approved jail facility unless the inmate is within thirty (30) months of his or her first parole eligibility date or his or her first post prison transfer eligibility date, unless:

(i) The inmate is returning to the county from which he or she was tried and convicted and the victim or victim’s immediate family, if residing in the county from which the inmate was tried and convicted, has been notified of the inmate’s return; or

(ii)(a) If the inmate is released to a county other than a county from which he or she was tried and convicted, the county sheriff of the county from which he or she was tried and convicted shall be notified as provided in subdivision (a)(3)(A) of this section.

(b)(1) Unless the county sheriff responds within fifteen (15) days of notification that he or she disapproves of the transfer, the inmate may be transferred as provided in this section.

(2) If the county sheriff disapproves of the transfer and an inmate becomes eligible to be released again, the notifications required by subdivision (a)(3) of this section shall be made again.

(b)(1) The number of persons on prerelease and work-release programs of the Department of Correction that may be housed at the Arkansas Health Center shall not exceed two hundred twenty-five (225).

(2) Provided, with the approval of the Department of Human Services State Institutional System Board and the Administrator of the Arkansas Health Center, a maximum of four hundred twenty-five (425) persons on prerelease and work-release programs may be housed at the center.

(c) Inmates released to the county sheriff of approved jail facilities or community correction centers pursuant to this section prior to July 28, 1995, shall remain eligible for release, notwithstanding the provisions of this section.

History. Acts 1968 (1st Ex. Sess.), No. 287, § 1; 1991, No. 1112, § 1; 1993, No. 532, § 8; 1993, No. 550, § 8; 1995, No. 1188, §§ 1, 2; 1997, No. 115, § 1; 1997, No. 936, § 1; 1997, No. 1271, § 1; 2001, No. 152, § 1; 2001, No. 1402, § 1.
50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1977, No. 948, § 20; 1981, No. 58, § 2; 1983, No. 309, §§ 1, 2; 1983, No. 440, § 1; 1983, No. 814, § 1; A.S.A. 1947, §§ 46-117, 46-117.2, 46-117.3; Acts 1991,

12-30-408. [Repealed.]

Publisher’s Notes. This section, concerning meritorious good time, was repealed by Acts 1989, No. 503, § 1. The section was derived from Acts 1968 (1st Ex. Sess.), No. 50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1981, No. 58, § 2; 1983, No. 440, § 1; A.S.A. 1947, § 46-117.

SUBCHAPTER 5 — PRIVATIZED PRISON-MADE GOODS

SECTION.	SECTION.
12-30-501. Private sector prison industry enhancement programs.	12-30-502. Transportation and sale of goods.

SECTION.

12-30-503. Purpose of wages set aside —

Rules and regulations of director.

12-30-501. Private sector prison industry enhancement programs.

(a) The Board of Corrections may contract with any private individual, corporation, partnership, or association whereby inmates would assemble, process, fabricate, or repair parts or components for goods or products being manufactured or produced by the private individual or entity.

(b) All contracts executed under this section must comply with federal law and must not result in any significant displacement of employed workers in the private sector.

History. Acts 1995, No. 106, § 1.

12-30-502. Transportation and sale of goods.

(a) Goods produced in whole or in part by Department of Correction inmates participating in private sector prison industry enhancement programs may be transported and sold in the same manner as goods produced by free persons, provided that the inmates participating in the private sector prison industry enhancement programs are paid at least the minimum wage prescribed by state law.

(b) The minimum wage requirement does not apply to hobby and craft items produced by the inmates on their own time and with their own resources, or to inmates working in any other prison industries program.

History. Acts 1995, No. 106, § 1.

12-30-503. Purpose of wages set aside — Rules and regulations of director.

(a) A person committed to the Department of Correction who is earning at least minimum wage and is employed pursuant to §§ 12-30-501 and 12-30-502 shall have his or her wages set aside by the warden or supervisor of the facility in a separate wage fund.

(b) The Director of the Department of Correction shall promulgate regulations which will:

(1) Protect the inmate's rights to due process;

(2) Provide for hearings as necessary before the Crime Victims Reparations Board; and

(3) Govern the disposition of a confined person's gross monthly wage, minus required payroll deductions and payment of necessary work-related incidental expenses, for the following purposes:

(A) The support of families and dependent relatives of the respective inmates;

(B) The discharge of any legal obligations, including judgments for restitution;

(C) To pay all or a part of the cost of the inmate's board, room, clothing, medical, dental, and other correctional services;

(D) To provide for funds payable to the inmate upon his or her release;

(E) Reimbursing the state for the actual value of state property intentionally or willfully and wantonly destroyed by the inmate during his or her commitment;

(F) Reimbursing the state for reasonable costs incurred in returning the inmate to the facility to which he or she is committed in the event of escape; and

(G) The deposit of an appropriate amount into the Crime Victims Reparations Revolving Fund.

History. Acts 1995, No. 106, § 1.

Cross References. Crime Victims Reparations Revolving Fund, § 19-5-950.

CHAPTER 31

CORRECTIONS RESOURCES COMMISSION

SECTION.

12-31-101 — 12-31-104. [Repealed.]

12-31-101 — 12-31-104. [Repealed.]

Publisher's Notes. Former chapter 31, concerning the Corrections Resources Commission was repealed by Acts 2005, No. 1962, § 51. The former chapter was derived from the following sources:

12-31-101. Acts 1991, No. 568, § 1; 1991, No. 1169, § 1.

12-31-102. Acts 1991, No. 568, § 1; 1991, No. 1169, § 1; 1997, No. 250, § 72.

12-31-103. Acts 1991, No. 568, § 2; 1991, No. 1169, § 2.

12-31-104. Acts 1991, No. 568, § 3; 1991, No. 1169, § 3.

CHAPTERS 32-40

[Reserved]

CHAPTER 41

LOCAL CORRECTIONAL FACILITIES

SUBCHAPTER.

1. GENERAL PROVISIONS.

2. CRIMINAL JUSTICE CENTERS.

3. COUNTY HOUSES OF CORRECTION.

4. CITY JAILS.

5. COUNTY JAILS.

6. COUNTY JAIL REVENUE BOND ACT OF 1981.

7. JAIL BOARDS — REVENUE BONDS.

8. JUVENILE DETENTION FACILITIES COOPERATIVE DEVELOPMENT AND OPERATIONS ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

12-41-101. Good time allowance.

12-41-102. Good time — Classification of inmates.

12-41-103. Good time — Forfeiture and restoration.

SECTION.

12-41-104. Emergency furloughs.

12-41-105. Commissions from prisoner telephone services.

Cross References. State correctional facilities, good time allowance, § 12-29-201 et seq.

Effective Dates. Acts 1979, No. 639, § 6: approved Mar. 28, 1979. Emergency clause provided: "The General Assembly finds that there is an immediate need for 'meritorious good time' and temporary emergency release of inmates in order to

encourage good discipline, good behavior, and efficiency within the county and city jail system. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after the date of its enactment."

12-41-101. Good time allowance.

(a) An inmate committed by any court in Arkansas to a county or city jail in the State of Arkansas may be entitled to a reduction, to be known as "meritorious good time", from his or her maximum term of up to ten (10) days for each month served in the county or city jails maintained in the State of Arkansas by the various counties and municipalities.

(b)(1) Meritorious good time shall be awarded under the rules and regulations promulgated by the county sheriff or chief of police and approved by the county quorum court of the various counties or the city legislative body of the various cities.

(2) It shall be administered by the county sheriff or chief of police, subject to the provisions of this subchapter, for good discipline, good behavior, work practices, and job responsibilities within the county or city jail.

History. Acts 1979, No. 639, §§ 1, 2; A.S.A. 1947, §§ 46-424, 46-425.

A.C.R.C. Notes. As enacted by Acts 1979, No. 639, § 1, subsection (a) began:

"From the effective date of this Act," The effective date of Acts 1979, No. 639 was March 28, 1979.

CASE NOTES

In General.

The authority to grant or deny meritorious good time to a county inmate belongs to the sheriff of the county to whose

jail an inmate is committed, not to the judge ordering the commitment. *Upton v. State*, 68 Ark. App. 84, 4 S.W.3d 510 (1999).

12-41-102. Good time — Classification of inmates.

(a) There is established a classification committee consisting of such persons as the county sheriff or chief of police may designate.

(b) The committee shall meet as often as necessary to classify the inmates into one (1) of three (3) classes according to behavior, good discipline, and job responsibility.

(c)(1) Inmates in Class I shall be allowed to earn ten (10) days' reduction for each month served;

(2) Those in Class II shall be allowed to earn five (5) days' reduction for each month served; and

(3) Those in Class III shall not be entitled to earn meritorious good time.

(d) Inmates of the county or city jail may be reclassified as often as the committee deems necessary to carry out the purposes of this subchapter and to maintain good discipline and efficiency at the county or city jail.

(e) Those inmates sentenced to the county or city jail under this subchapter shall not receive more than ten (10) days of meritorious good time for each month served.

History. Acts 1979, No. 639, § 4; A.S.A. 1947, § 46-427.

12-41-103. Good time — Forfeiture and restoration.

(a) All meritorious good time shall be forfeited by the inmate in the event of escape, and all or part of the accrued good time may be taken away by the county sheriff or chief of police for infraction of rules.

(b) However, in the event of escape, the county sheriff or chief of police may restore all or part of any accrued meritorious good time if the escapee returns to the institution voluntarily, without expense to the county or city, and without any act of violence while a fugitive from the institution.

(c) In other instances, the county sheriff or chief of police may restore lost meritorious good time according to rules approved by the county quorum court or city legislative body.

History. Acts 1979, No. 639, § 3; A.S.A. 1947, § 46-426.

12-41-104. Emergency furloughs.

Under rules prescribed by the county sheriff or chief of police, and approved by the county quorum court or city legislative body, the county sheriff or chief of police may authorize emergency furloughs, under reasonable conditions, for inmates for occasions such as serious illness or death of a member of the inmate's family or other proper emergency.

History. Acts 1979, No. 639, § 5; A.S.A. 1947, § 46-428.

12-41-105. Commissions from prisoner telephone services.

(a) Commissions derived from prisoner telephone services provided in the various county and regional detention facilities in the state shall be deposited into the county treasury of the county in which the detention facility is located and shall be credited to the sheriff's office fund.

(b)(1) Of the commissions deposited into the sheriff's office fund in each county pursuant to subsection (a) of this section, one hundred percent (100%) shall be credited to the sheriff's office communications facility and equipment fund.

(2) Each county sheriff's office may allocate for the maintenance and operation of the county jail up to fifty percent (50%) of the commissions deposited into the sheriff's office communications facility and equipment fund.

(c) The provisions of this section do not apply to funds derived from prisoner telephone services provided in Department of Correction facilities or Department of Community Correction facilities or in municipally owned detention facilities or in county detention facilities in counties with a population of one hundred seventy-five thousand (175,000) or more according to the latest federal decennial census.

History. Acts 1995, No. 996, §§ 1, 2;
1997, No. 520, § 1; 1997, No. 1287, § 1.

SUBCHAPTER 2 — CRIMINAL JUSTICE CENTERS

SECTION.

12-41-201. Definitions.

12-41-202. Authority to contract — Pre-requisites.

12-41-203. Terms of contract.

12-41-204. Financing.

12-41-205. Use of center by courts.

SECTION.

12-41-206. Determination of applicable law.

12-41-207. Custody in center.

12-41-208. Extradition and transfer.

12-41-209. Service of process.

12-41-210. Right of arrest.

Cross References. Bi-State Criminal
Justice Center Compact, § 12-49-301.

Southern Arkansas University, § 6-65-404.

12-41-201. Definitions.

As used in this subchapter:

(1) "Law" means a statute of a state, a written opinion of a court of record, a municipal ordinance, a county quorum court ordinance, or a rule authorized by and lawfully adopted pursuant to a statute; and

(2) "Municipality" means an incorporated city or town.

History. Acts 1981, No. 696, § 1; A.S.A.
1947, § 46-1601.

12-41-202. Authority to contract — Prerequisites.

(a) A county in this state and a municipality in that county, both located on the state line, may contract with an adjoining county and any municipality in that county located on the other side of the state line for the joint construction, financing, operation, and management of a justice center to be located on the state line.

(b) A county and a municipality in this state may contract with a county and a municipality in an adjoining state as provided by subsection (a) of this section and § 12-41-204 only if the other state enacts legislation relating to the establishment of a justice center pursuant to a contract as provided in those sections that:

(1) Provides for joint responsibility of the county sheriffs of the two (2) counties over the operation of a jail, lockup, or other detention facility in the center and persons in custody in the facility or for the hiring of a jailer with those responsibilities;

(2) Provides for the application and enforcement of the law of both states in the manner provided by § 12-41-206;

(3) Provides that a person in custody in the center under Arkansas law may be prosecuted for an offense against Arkansas law without extradition of that person, as provided by § 12-41-208;

(4) Provides that a person in custody in the center under Arkansas law may not be prosecuted for an offense against the law of the other state without extradition of that person or personally served with process in the center for a proceeding in the other state;

(5) Provides that a person summoned to appear in the center under Arkansas law may not be personally served with process in any part of the center for a proceeding in the other state and may be arrested in any part of the center for an offense against Arkansas law and prosecuted for that offense without extradition of the person if the person is physically present in any part of the center or in Arkansas at the time of the prosecution, as provided by § 12-41-209;

(6) Provides that a person summoned to appear in the center under Arkansas law may not be arrested in any part of the center for an offense against the law of the other state;

(7) Provides that center personnel or a peace officer of either state may transfer across the state line in the center a person in custody in the center under the law of either state and may exercise control over that person on both sides of the state line in the center, as provided by § 12-41-208;

(8) Provides that a person in the center who is not confined in the center, taken to the center under arrest, or summoned to appear in the center, may be arrested in any part of the center for an offense against the laws of either state without extradition of that person, and that extradition of a person who was arrested in the center under those circumstances is not required in order for the person to be prosecuted for an offense against the law of either state if the person is physically present in any part of the center or the state of the prosecution at the time of the prosecution, as provided by § 12-41-208;

(9) Authorizes a peace officer of either state, under Arkansas law, to arrest a person in any part of the center for an offense against Arkansas law if a peace officer of Arkansas would be authorized to make that arrest in the part of the center in Arkansas as provided by § 12-41-210; and

(10) Authorizes a peace officer of either state, under the law of the other state, to arrest a person in any part of the center for an offense against the law of the other state if a peace officer of the other state would be authorized to make that arrest in the part of the center in the other state, as provided by § 12-41-210.

History. Acts 1981, No. 696, §§ 2, 9;
A.S.A. 1947, §§ 46-1602, 46-1609.

12-41-203. Terms of contract.

(a) The contract must provide that the county sheriffs of the two (2) counties are jointly responsible for operation of any jail, lockup, or other detention facility in the justice center and the custody, care, and treatment of persons in custody in the facility or must provide for the hiring of a jailer with those responsibilities.

(b) The contracting parties may specify in the contract the manner of determining the persons responsible for:

(1) The operation, alteration, maintenance, cleaning, and repair of the facilities;

(2) The employment of center personnel;

(3) The purchase of materials, supplies, tools, and other equipment to be jointly used by offices provided or used by the contracting parties;

(4) The preparing of reports to the governing bodies of the contracting parties;

(5) Joint recordkeeping, communications, or dispatch systems; and

(6) The performance of any other powers or duties relating to operation of the center.

(c) A county and municipality in this state may contract for the center to contain:

(1) Courtrooms and office space needed by county, district, and appellate courts;

(2) Jail, lockup, and other detention facilities;

(3) Federal, county, precinct, and municipal offices for prosecuting attorneys and other personnel as needed;

(4) Adult or juvenile probation offices;

(5) Any other offices that either the county or municipality is separately authorized or required to operate or provide; and

(6) Parking space, dining areas, and other facilities incidental to operation of the center.

(d) The contracting parties may provide in the contract the manner of determining the personnel policies and employment benefit programs for center personnel.

History. Acts 1981, No. 696, §§ 2, 4-6; A.S.A. 1947, §§ 46-1602, 46-1604 — 46-1606; Acts 2003, No. 1185, § 19.

12-41-204. Financing.

(a) The governing body of a municipality or county contracting, as provided by §§ 12-41-202 and 12-41-203, may finance its share of the construction, financing, operation, or management of the justice center by any means that it could finance the type of facilities in the center to be used or provided by the municipality or county.

(b) The contract may take advantage of the availability of federal funds to finance any part of the center.

History. Acts 1981, No. 696, § 3; A.S.A. 1947, § 46-1603.

12-41-205. Use of center by courts.

(a) A circuit court or district court having jurisdiction in the county or municipality in which a part of the justice center is located may maintain offices and courtrooms and hold proceedings at the center.

(b)(1) A court of this state may not hold proceedings in the part of the center located in the other state.

(2) Courts of the other state may hold proceedings in the part of the center in this state if so authorized by the other state.

History. Acts 1981, No. 696, § 2; A.S.A. 1947, § 46-1602.

12-41-206. Determination of applicable law.

(a)(1) Except as otherwise provided by this subchapter, the law of both states regarding rights, duties, liabilities, privileges, and immunities arising from conduct applies to conduct in any part of the justice center.

(2) If, however, it is impossible for a person to conform his or her conduct in the center to the law of both states, that person may choose which state's law governs that conduct.

(3) If a person chooses to conform his or her conduct in the center to the law of the other state, the conflicting law of this state does not apply to that conduct.

(b) The physical plant of the center and equipment and facilities used by personnel of both states employed at the center are constructively present in both states.

(c) Except as provided by subsection (d) of this section, property in any part of the center that is owned by or in the possession of a person in custody or summoned to appear in the center is constructively present in the state under the law of which the person was taken into custody or summoned to appear.

(d)(1) Possession of property that constitutes an offense committed in the center is conduct to which subsection (a) of this section applies.

(2) A person's exercise of a duty in regard to property in the center is conduct to which subsection (a) of this section applies.

(e) Property that is ordered by a court to be produced in the center or that is in the possession of a peace officer or a party to a proceeding for use as evidence before a court holding a proceeding in the center is constructively present in the state of the court.

(f) Property in the center that is not covered by subsection (c), (d), or (e) of this section is constructively present in both states.

(g)(1) The law of a state in which property is constructively present applies to that property to the same extent that such law would apply if the property were actually present in that state.

(2) If property is constructively present in only one (1) state, the law of the state in which the property is not constructively present may be applied to that property only to the extent that such law would apply if the property were actually outside that state.

(h)(1) Except as otherwise provided by this subchapter, the courts of both states have concurrent jurisdiction over the geographic area of both states in the center, but the state in which a prosecution is first instituted for an offense committed in the center retains jurisdiction to apply that state's law to the exclusion of the other state's jurisdiction, unless the prosecution is terminated without jeopardy attaching under the law of the state of the first prosecution.

(2) For the purposes of this subchapter, a prosecution is commenced in this state on the filing of an indictment, information, or complaint as determined by applicable provisions of Arkansas law.

History. Acts 1981, No. 696, § 7; A.S.A. 1947, § 46-1607.

12-41-207. Custody in center.

(a) A person who is in the justice center in the custody of a peace officer or center personnel under Arkansas law:

(1) Is constructively present in Arkansas while that person is in custody in the part of the center in the other state;

(2) May be prosecuted for an offense against Arkansas law without extradition of that person; and

(3) May be personally served in any part of the center for a proceeding in Arkansas.

(b) A person who is in the center in the custody of a peace officer or center personnel under the law of the other state:

(1) Is constructively present in the other state while that person is in custody in the part of the center in Arkansas;

(2) May not be prosecuted for an offense against Arkansas law without extradition of that person; and

(3) May not be personally served with process in any part of the center for a proceeding in Arkansas.

History. Acts 1981, No. 696, § 8; A.S.A. 1947, § 46-1608.

12-41-208. Extradition and transfer.

(a) Arkansas agrees that a person who is in the justice center in the custody of a peace officer or center personnel under the law of the other state may be:

(1) Prosecuted for an offense against the law of the other state without extradition of that person; and

(2) Personally served with process in any part of the center for a proceeding in the other state.

(b) Center personnel or a peace officer of either state may transfer across the state line in the center a person in custody in the center under the law of either state and may exercise control over that person on both sides of the state line in the center.

(c)(1) A person in the center who has not been confined in the center, taken to the center under arrest or summoned to appear in the center, may be arrested in any part of the center for an offense against the law of either state without extradition of that person.

(2) Extradition of a person who was arrested in the center under those circumstances is not required in order to prosecute the person for an offense against the law of either state if the person is physically present in any part of the center or the state of the prosecution at the time of the prosecution.

(d) Notwithstanding any law to the contrary, the Governor of this state may recognize a demand for the extradition of a person charged with a crime in the other state if the demand alleges that any element of the offense occurred in any part of the center.

History. Acts 1981, No. 696, § 8; A.S.A. 1947, § 46-1608.

12-41-209. Service of process.

(a)(1) A person who is summoned to appear in the justice center under Arkansas law:

(A) Is constructively present in Arkansas while that person is appearing under the summons in the part of the center in the other state;

(B) Without extradition, may be arrested in any part of the center for an offense against Arkansas law and prosecuted for that offense if that person is physically present in any part of the center or in Arkansas at the time of the prosecution; and

(C) May be personally served with process in any part of the center for a proceeding in Arkansas.

(2) A person who is summoned to appear in the center under the law of the other state:

(A) Is constructively present in the other state while that person is appearing under the summons in the part of the center in Arkansas;

(B) Without extradition, may not be arrested under Arkansas law in any part of the center for an offense against Arkansas law; and

(C) May not be personally served with process in any part of the center for a proceeding in Arkansas.

(b)(1) Arkansas agrees that a person who is summoned to appear in the center under the law of the other state may be arrested in any part of the center for an offense against the law of the other state and prosecuted for that offense without extradition if that person is physically present in any part of the center or the other state at the time of the prosecution.

(2) Arkansas agrees that a person who is summoned to appear in the center under the law of the other state may be personally served with process in any part of the center for a proceeding in the other state.

(c)(1) If a person in the center is constructively present in one (1) state under this section, the law of the state in which the person is not constructively present may be applied to that person only to the extent that such law would apply if the person were actually outside that state.

(2) However, the law applicable to that person's conduct in the center is governed by § 12-41-206 and whether extradition is required to arrest or prosecute that person for an offense committed in the center is governed by this section.

History. Acts 1981, No. 696, § 8; A.S.A. 1947, § 46-1608.

12-41-210. Right of arrest.

(a) If the other state enacts legislation as provided in § 12-41-202, a peace officer of Arkansas may:

(1) Arrest a person under Arkansas law in the part of the center in the other state for an offense against Arkansas law if that peace officer would be authorized to make that arrest in the part of the center in Arkansas; and

(2) Arrest a person under the law of the other state in any part of the center for an offense against the law of the other state if a peace officer of the other state would be authorized to make that arrest in the part of the center in the other state.

(b) Arkansas agrees that a peace officer of the other state may arrest a person under:

(1) Arkansas law in any part of the center for an offense against Arkansas law if a peace officer of Arkansas would be authorized to make that arrest in the part of the center in Arkansas; and

(2) The law of the other state in the part of the center in Arkansas for an offense against the law of the other state if that peace officer would be authorized to make that arrest in the part of the center in the other state.

History. Acts 1981, No. 696, § 8; A.S.A. 1947, § 46-1608.

SUBCHAPTER 3 — COUNTY HOUSES OF CORRECTION

SECTION.	SECTION.
12-41-301. Purchase of land.	12-41-306. Commitment to house of correction.
12-41-302. Construction of facility.	12-41-307. Labor of inmates.
12-41-303. Contracts governed by existing laws.	12-41-308. Products of labor — Application.
12-41-304. Supervision by court.	
12-41-305. Superintendent.	

Publisher’s Notes. This subchapter may be impliedly repealed by subchapter 5 of this chapter.

Cross References. County farm, § 12-42-103.

Effective Dates. Acts 1868, No. 27, § 21: effective on passage.

12-41-301. Purchase of land.

(a)(1) The county courts of the several counties in this state shall purchase a farm or tract of land within the boundaries of the county and provide for the erection on the farm or tract of land a house of correction.

(2) However, the farm or tract of land shall not be purchased unless the taxpayers of each township in the county shall petition the county court to provide for the purchase. No farm shall be purchased unless a majority of all the taxpayers of the county sign the petitions.

(b)(1) The county court may appoint three (3) discreet persons as commissioners, who shall be taxpayers and qualified voters of this state, to select and agree for the purchase of a farm or tract of land as provided in subsection (a) of this section.

(2) When the commissioners have made a selection and agreement concerning the farm or tract of land, they shall report their doings to the county court.

(3) If the court approves the selection and the stipulations of the commissioners concerning the payment for the land, then the court shall provide for the purchase of the land and take from the vendor of the land a good and sufficient deed of conveyance for the use of the county.

(4) The deed of conveyance shall be in such form and shall be taken in such manner as is provided by law in such cases.

(c) The farm or tract of land provided for in this section may be either improved or unimproved land, as the county court may in its discretion elect.

(d) The farm or tract of land provided for in this section shall consist of such number of acres as the county court may in its discretion determine.

(e) When the court determines to purchase the farm or tract of land, the court shall contract for the land on the most favorable terms possible to the county.

(f) The court shall pay for the farm, and for the erection of the house of correction, in the same manner that other public county improvements are paid for.

History. Acts 1868, No. 27, §§ 1-3, 6, p. 84; C. & M. Dig., §§ 1950-1955, 1959; Pope's Dig., §§ 2479-2484, 2488; A.S.A. 1947, §§ 46-601 — 46-603, 46-606.

Publisher's Notes. This section may be affected by § 12-42-103.

12-41-302. Construction of facility.

(a) When any farm or tract of land has been purchased by the county court as provided in § 12-41-301(a), the county court shall cause to be let out to the lowest bidder the contract for building and erecting on the tract of land a house of correction.

(b) The house of correction shall be so constructed as to secure, as nearly as may be, all persons sentenced to confinement therein and shall be composed of such material and of such form and dimensions as the court shall direct.

(c) The house of correction shall possess such means of ventilation and other sanitary arrangements as will promote the health of the prisoners therein confined.

History. Acts 1868, No. 27, §§ 4, 7, p. 84; C. & M. Dig., §§ 1956, 1957, 1960; Pope's Dig., §§ 2485, 2486, 2489; A.S.A. 1947, §§ 46-604, 46-607.

12-41-303. Contracts governed by existing laws.

All contracts, appropriations, and disbursements of money concerning the purchase of the land or farm provided for in § 12-41-301 and the erection of the house of correction shall be made according to and be governed by the laws concerning public county contracts, appropriations, and disbursements.

History. Acts 1868, No. 27, § 5, p. 84; C. & M. Dig., § 1958; Pope's Dig., § 2487; A.S.A. 1947, § 46-605.

12-41-304. Supervision by court.

(a) The county court shall have general supervisory control over the farm and house of correction and shall take means to correct any mismanagement of the facilities.

(b) With the advice of the superintendent, the county court shall prescribe, from time to time, such rules for the government and

discipline of prisoners in the house of correction and for the discipline and control of the labor of the prisoner, as the county court shall deem most expedient and wholesome.

History. Acts 1868, No. 27, §§ 11, 14, p. 84; C. & M. Dig., §§ 1966, 1969; Pope's Dig., §§ 2495, 2498; A.S.A. 1947, §§ 46-611, 46-614.

12-41-305. Superintendent.

(a) The county court of any county in which any house of correction shall be erected shall appoint a discreet person, who shall be a qualified elector of this state and who shall be known as the superintendent of the house of correction.

(b) The superintendent shall have charge of the farm or lands attached to the house of correction and shall direct the labor of all persons sentenced to confinement in the house of correction.

(c) The superintendent shall be responsible to the county court for the correct treatment of all prisoners confined in the house of correction and for the faithful enforcement of the rules and discipline.

(d) For neglect of duty or other improper management of the house of correction, the county court may remove the superintendent.

(e) The county court shall determine the compensation of the superintendent.

History. Acts 1868, No. 27, §§ 10, 12, p. 84; C. & M. Dig., §§ 1963-1965; Pope's Dig., §§ 2492-2494, 2496; A.S.A. 1947, §§ 46-610, 46-612, 46-620.

12-41-306. Commitment to house of correction.

(a) When any house of correction has been erected as provided for in § 12-41-302, all persons who shall be convicted of petit larceny or any other crime cognizable before justices of the peace, and sentenced to imprisonment, shall be sentenced to confinement in the house of correction instead of the county jail.

(b) All persons then confined in the county jail for the crime of petit larceny or for any other crime cognizable before justices of the peace shall be transferred by order of the county court to the house of correction.

History. Acts 1868, No. 27, § 8, p. 84; C. & M. Dig., § 1961; Pope's Dig., § 2490; A.S.A. 1947, § 46-608.

12-41-307. Labor of inmates.

(a) All persons sentenced to confinement in the house of correction shall be compelled to labor on the farm or lands on which the house of correction shall be situated in such manner as is provided for in subsection (c) of this section and for the term of their imprisonment.

(b) Prisoners confined in the house of correction shall labor for such number of hours each day as the county court may determine.

(c) The prisoners shall be compelled to perform any and all such labors as pertain to the clearing, improvement, and cultivation of the farm and garden or to mechanical pursuits.

History. Acts 1868, No. 27, §§ 9, 13, p. 609; C. & M. Dig., §§ 1962, 1968; Pope's Dig., §§ 2491, 2497; A.S.A. 1947, §§ 46-84; 609, 46-613.

12-41-308. Products of labor — Application.

(a) The product of all labor of the prisoners confined in the house of correction shall be applied, under the direction of the county courts, to the payment of the expenses of the persons so confined and such other expenses as may be necessarily incurred in improving and keeping the house and farm in repair.

(b) If the product of labor of persons confined in the house of correction shall not be sufficient to defray the expenses indicated in subsection (a) of this section, then the deficit shall be supplied out of the county treasury in such manner as prisoners in the county jail are now supplied.

(c) If the products of the labor of persons confined in the house of correction shall be more than sufficient to defray the expenses indicated in subsection (a) of this section, then the surplus of such products shall be disposed of under the direction of the county court, and the proceeds thereof shall be paid into the county treasury.

History. Acts 1868, No. 27, §§ 15-17, p. 615; C. & M. Dig., §§ 1970-1972; Pope's Dig., §§ 2499-2501; A.S.A. 1947, §§ 46-84; 615 — 46-617.

SUBCHAPTER 4 — CITY JAILS

SECTION.

12-41-401. Erection and maintenance.

12-41-402. Food for prisoners.

12-41-403. Police matron.

12-41-404. Expenses of county prisoners held in municipal jail.

SECTION.

12-41-405. Management of city jail populations.

Cross References. County jail, use by municipality, § 14-55-602.

Effective Dates. Acts 1875, p. 1, § 95: effective on passage.

Acts 1895, No. 72, § 5: effective on passage.

12-41-401. Erection and maintenance.

(a) The city council shall have power to erect, establish, and maintain a city jail, which shall be in the keeping and under the control of

the chief of police, under such rules and regulations as the city council may prescribe.

(b) The city council shall provide one (1) or more watch houses or stations and shall also provide suitable rooms for holding the district court.

(c) There shall be provided a separate apartment or ward for females in all city jails in cities of the first class.

History. Acts 1875, No. 1, § 55, p. 1; §§ 7708, 7736; Pope's Dig., §§ 9851, 9932; 1895, No. 72, § 4, p. 94; C. & M. Dig., A.S.A. 1947, §§ 46-701, 46-706.

12-41-402. Food for prisoners.

It shall be the duty of the keeper of the city jail, watch, and station houses to provide all persons confined therein for any offense with necessary food during their confinement, and the cost thereof, not exceeding thirty cents (30¢) per day to each person, shall be taxed as costs in the case and paid to the keeper of the jail, watch, or station house out of the city treasury, on the certificate of the chief of police and approval of the mayor, when audited by the city council.

History. Acts 1875, No. 1, § 55, p. 1; C. & M. Dig., § 7737; Pope's Dig., § 9933; A.S.A. 1947, § 46-702.

12-41-403. Police matron.

(a) In all cities of the first class there shall be elected by the city council each year immediately after the organization thereof, after each annual election, one (1) police matron, who shall be at least twenty-five (25) years of age and a woman of good character and deportment, who shall hold office until her successor is elected and qualified.

(b) The police matron shall be subject to the control of the chief of police and the mayor.

(c) The police matron shall, before entering upon the duties of her office, take the oath of office provided by the Arkansas Constitution for civil officers.

(d) She shall receive for her services such sum as may be prescribed by the ordinances of the city, not less than twenty-five dollars (\$25.00) per month, payable as the salaries of other police of the city are paid.

(e)(1) It shall be the duty of the police matron to take supervision of all girls or women who may be imprisoned in the city.

(2) It shall be her duty to examine the persons of such prisoners, and the police matron shall conduct the examination in private, in the absence of men and boys.

(3) She shall have exclusive control of the apartment for female prisoners, and it shall be her duty to keep the apartment in a clean and good sanitary condition.

(4) The police matron shall do and perform all such duties in reference to female prisoners as may be provided by law or the lawful ordinances of such city.

History. Acts 1895, No. 72, §§ 1-4, p. Dig., §§ 9850, 9851; A.S.A. 1947, §§ 46-94; C. & M. Dig., §§ 7707, 7708; Pope's 703 — 46-706.

12-41-404. Expenses of county prisoners held in municipal jail.

(a) The governing bodies in the various municipalities in this state may establish a daily fee to be charged counties for keeping prisoners of counties in the municipal jail.

(b) The fee shall be based upon the reasonable expenses which the municipality incurs in keeping such prisoners in the municipal jail.

(c) Counties whose prisoners are maintained in a municipal jail shall be responsible for paying the fee established.

History. Acts 1981, No. 796, § 2; A.S.A. 1947, § 46-707.

12-41-405. Management of city jail populations.

(a)(1) The chief of police, or his or her designee, may determine if a person convicted and sentenced to the city jail shall serve his or her sentence on electronic monitoring or on weekends if the determination does not conflict with any court orders.

(2) If the chief of police, or his or her designee, determines that a person convicted and sentenced to the city jail shall serve his or her sentence on electronic monitoring or on weekends, an agreement shall be entered into between the chief of police, or his or her designee, and the convicted person outlining the conditions of the sentence.

(b) If the convicted person fails to follow the conditions of the agreement, the chief of police, or his or her designee, may cancel the agreement and return the convicted person to the city jail by any lawful means necessary to serve the sentence.

History. Acts 2005, No. 423, § 2.

SUBCHAPTER 5 — COUNTY JAILS

SECTION.

- 12-41-501. [Repealed.]
- 12-41-502. Supervision.
- 12-41-503. Management of local jail populations.
- 12-41-504. Feeding and keeping prisoners.
- 12-41-505. Expenses and support.
- 12-41-506. Expenses of municipal prisoners held in county jails.

SECTION.

- 12-41-507. Securing of county jail.
- 12-41-508. Duty of grand jury.
- 12-41-509. Commitment to jail of another county.
- 12-41-510. United States prisoners.
- 12-41-511. Imprisonment of county sheriff.

Publisher's Notes. This subchapter may impliedly repeal subchapter 3 of this chapter.

Cross References. County farm, § 12-42-103.

County jail, use by municipality, § 14-55-602.

Effective Dates. Acts 1877, No. 72, § 2: effective on passage.

Acts 1927, No. 366, § 4: became law without Governor's signature, Mar. 31, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health, and safety, an emergency is hereby declared to exist for the reason that there is no law, either special or general, now in force regulating the fees for keeping prisoners in Crawford County, hence this act shall be in full force and effect from and after its passage."

Acts 2007, No. 117, § 2: Feb. 16, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that county jails

and regional detention facilities in this state lack sufficient operating funds; that the revenue derived as a result of this act will be used exclusively for the maintenance, operation, and capital expenditures of county jails and regional detention facilities, and that this act is necessary because the immediate collection of booking and administration fees will enable county jails and regional detention facilities to expedite efforts to increase the efficient administration of justice. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-41-501. [Repealed.]

Publisher's Notes. This section, concerning location of county jails, was repealed by Acts 1987, No. 881, § 2. The

section was derived from Rev. Stat., ch. 81, § 1; C. & M. Dig., § 6206; Pope's Dig., § 8169; A.S.A. 1947, § 46-401.

12-41-502. Supervision.

The county sheriff of each county in this state shall have the custody, rule, and charge of the jail within his or her county and all prisoners committed in his or her county, and he or she may appoint a jailer for whose conduct he or she shall be responsible.

History. Rev. Stat., ch. 81, § 2; C. & M. Dig., § 6207; Pope's Dig., § 8170; A.S.A. 1947, § 46-402.

CASE NOTES

Inmate Safety.

Complaint that charged sheriff with violating county jail inmates' constitutional right to reasonably safe conditions during confinement could not be dismissed since it was possible for the inmates to prove that the sheriff had breached his duty to provide a reasonably safe place of confinement imposed by the

United States Constitution, this section, and § 12-41-507. *Hamilton v. Covington*, 445 F. Supp. 195 (W.D. Ark. 1978).

Cited: *Cain v. Woodruff County*, 89 Ark. 456, 117 S.W. 768 (1909); *Clay County v. Ruff*, 192 Ark. 150, 90 S.W.2d 474 (1936); *Henderson v. Dudley*, 264 Ark. 697, 574 S.W.2d 658 (1978); *Coones v. State*, 280 Ark. 321, 657 S.W.2d 553

(1983); *Gravett v. Villines*, 314 Ark. 320, 862 S.W.2d 260 (1993).

12-41-503. Management of local jail populations.

(a) County sheriffs and other keepers or administrators of jails within the State of Arkansas are responsible for managing the populations and operations of their respective facilities in compliance with the laws and the Arkansas Constitution and within the requirements of the United States Constitution.

(b) Neither a county sheriff nor another keeper or administrator of a jail shall refuse to accept any prisoner lawfully arrested or committed within the jurisdiction of the supporting agency of the jail except as necessary to limit prisoner population in compliance with subsection (a) of this section.

(c)(1) A county sheriff or his or her designee may determine if a convicted person sentenced to the county jail shall serve his or her sentence on electronic monitoring, on weekends, or by any other lawful alternative to continual detention in the county jail that rehabilitates the convicted person or benefits the county when this does not conflict with any court orders.

(2) If a county sheriff or his or her designee determines that a convicted person sentenced to the county jail shall serve his or her sentence on electronic monitoring, on weekends, or by any other lawful alternative to continual detention in the county jail that rehabilitates the convicted person or benefits the county, an agreement shall be entered into between the county sheriff or his or her designee and the convicted person outlining the conditions of the sentence.

(3) If the convicted person fails to follow the conditions of the agreement, the county sheriff or his or her designee may cancel the agreement and return the convicted person to the county jail by any lawful means necessary to serve the sentence.

(d) When more than one (1) legal jurisdiction, that is, counties or municipalities, share a common jail, the participating jurisdictions may enter into agreements to share the operational costs of the jail.

(e) When a shared jail is operated and a jurisdiction that is eligible to participate in the shared operation opts not to participate, then, in the event that the jurisdiction has prisoners committed to the shared jail, that jurisdiction may be required to pay fixed per diem charges, not to exceed actual costs, including capital costs, for each prisoner committed or housed in the jail.

(f) An agreement with an agency or a jurisdiction not eligible for participation in a shared jail operation project may be made for the housing of prisoners provided the charges assessed do not exceed the actual costs, including capital costs.

(g) Jails shall accept prisoners of the United States Government provided space and staffing are available and the delivering government agency agrees to pay a per diem charge not to exceed the actual costs, including capital costs.

(h) Nothing in this section prohibits any jurisdiction from entering into a contractual agreement with a private organization for the operation of a jail facility.

History. Acts 1997, No. 1097, § 1; 1999, No. 754, § 1; 2005, No. 423, § 1; 2007, No. 300, § 1; 2009, No. 165, § 14.

Publisher's Notes. Former § 12-41-503, concerning prisoners, was repealed by Acts 1997, No. 1097, § 3. The section was derived from Rev. Stat., ch. 81, § 3; C. & M. Dig., § 6208; Pope's Dig., § 8171; A.S.A. 1947, § 46-403.

Amendments. The 2005 amendment redesignated former (c) as present (c)(1); deleted "in counties with a population of over two hundred fifty thousand (250,000)

persons" in (c)(1); and added (c)(2) and (c)(3).

The 2007 amendment inserted "or by any other lawful alternative to continual detention in the county jail that rehabilitates the inmate or benefits the county" in (c)(1) and (c)(2), and made related changes.

The 2009 amendment substituted "rehabilitates the convicted person" for "rehabilitates the inmate" in (c)(1) and (c)(2), and made stylistic changes.

12-41-504. Feeding and keeping prisoners.

The quorum court in each county shall prescribe the method and procedure for feeding and keeping prisoners confined in the county jail and shall provide for payment for food and services.

History. Acts 1977, No. 342, § 1; A.S.A. 1947, § 46-404.1.

CASE NOTES

Cited: Union County v. Warner Brown Hosp., 297 Ark. 460, 762 S.W.2d 798 (1989).

12-41-505. Expenses and support.

(a)(1) Every person who may be committed to the common jail of the county by lawful authority for any criminal offense or misdemeanor, if he or she shall be convicted, shall pay the expenses in carrying him or her to jail and also for his or her support from the day of his or her initial incarceration for the whole time he or she remains there.

(2) The expenses which accrue shall be paid as directed in the act regulating criminal proceedings.

(b)(1) A person convicted of a felony or a Class A misdemeanor shall be assessed a booking and administration fee of twenty dollars (\$20.00).

(2)(A) The booking and administration fee described in subdivision (b)(1) of this section shall be assessed upon the conviction of a defendant and included in the judgment of conviction entered by the court.

(B) If a court suspends imposition of sentence on a defendant or places him or her on probation and does not enter a judgment of conviction, the court shall impose the booking and administration fee as a cost.

(3) The booking and administration fee assessed under subdivision (b)(1) of this section shall be deposited into a special fund within the county treasury to be used exclusively for the maintenance, operation, and capital expenditures of a county jail or regional detention facility.

(c) The property of the person shall be subject to the payment of the expenses and the booking and administration fee.

History. Rev. Stat., ch. 81, §§ 5, 7; C. & M. Dig., §§ 6209, 6212; Pope's Dig., §§ 8172, 8175; A.S.A. 1947, §§ 46-404, 46-407; Acts 1999, No. 1128, § 1; 2007, No. 117, § 1.

Amendments. The 2007 amendment inserted (b) and redesignated former (a) and (b) as (a)(1) and (a)(2); and added "and the booking and administration fee" at the end of (c).

CASE NOTES

Applicability.

Circuit court did not err in ordering appellant to pay \$6,706.22 to a county pursuant to its "pay for stay" ordinance; plain reading of this section, which allowed the county to recoup certain expenses, did not establish that it applied

only to those persons incarcerated in the Department of Corrections. *Wickham v. State*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 411 (June 18, 2009).

Cited: *Union County v. Warner Brown Hosp.*, 297 Ark. 460, 762 S.W.2d 798 (1989).

12-41-506. Expenses of municipal prisoners held in county jails.

(a)(1) In the absence of an agreement on jail costs between a county and all municipalities having law enforcement agencies in the county, the quorum court in a county in this state may by ordinance establish a daily fee to be charged municipalities for keeping prisoners of municipalities in the county jail.

(2) The fee shall be based upon the reasonable expenses which the county incurs in keeping such prisoners in the county jail.

(b)(1) Municipalities whose prisoners are maintained in the county jail shall be responsible for paying the fee established by the quorum court in the county.

(2) When a person is sentenced to a county jail for violating a municipal ordinance, the municipality shall be responsible for paying the fee established by an agreement or ordinance of the quorum court in the county.

(3) Municipalities may appropriate funds to assist the county in the maintenance and operation of the county jail.

(c)(1) Each county sheriff shall bill each municipality monthly for the cost of keeping prisoners in the county jail.

(2) Each county sheriff shall remit to the county treasurer monthly the fees collected under this section, and such fees shall be credited to the county general fund.

(d) Counties shall give priority to in-county municipalities over contracts for out-of-county prisoners.

History. Acts 1981, No. 796, § 1; A.S.A. 1947, § 46-419.1; Acts 1993, No. 516, § 1; 1993, No. 1290, § 1; 1995, No. 555, § 1.

12-41-507. Securing of county jail.

(a) Whenever the county sheriff of any county of this state shall be of the opinion that the jail of his or her county is insufficient to secure the prisoners that may be therein committed, it shall be his or her duty to give notice thereof to the county court.

(b) If the jail cannot be immediately repaired and made safe and secure, the county court may, by an order to be entered on its minutes, direct the county sheriff to employ guards sufficient for the guarding and safe-keeping of the prisoners. However, the guards shall in no instance exceed three (3) persons.

(c) In case the insufficiency in the opinion of the county sheriff shall occur in vacation of the county court, it shall be the duty of the county sheriff to give notice to the county judge of such county and if the jail cannot be immediately repaired and made safe and secure, the county judge may, by an order in writing, direct the county sheriff to employ guards for the purpose, not exceeding the number provided for in subsection (b) of this section, for such length of time as he or she may deem necessary, not exceeding the second day of the actual meeting of the county court at any regular, adjourned, or special term.

(d) A guard shall not be allowed a sum to exceed two dollars (\$2.00) for each twenty-four (24) hours.

History. Acts 1877, No. 72, § 1, p. 72; C. & M. Dig., § 6217; Pope's Dig., § 8180; A.S.A. 1947, § 46-412.

CASE NOTES

Inmate Safety.

Complaint that charged sheriff with violating county jail inmates' constitutional right to reasonably safe conditions during confinement could not be dismissed since it was possible for the inmates to prove that the sheriff breached his duty to provide a reasonably safe place of confinement imposed by the United States Constitution, this section, and § 12-41-502. *Hamilton v. Covington*, 445 F. Supp. 195 (W.D. Ark. 1978).

Individual quorum court members could be held liable in damages for injuries sustained by inmates of county jail only if they knew or reasonably should have known that county jail inmates have a constitutional right to have a jailer present for all except an insubstantial

amount of time and knowingly took actions violative of this right. *Hamilton v. Covington*, 445 F. Supp. 195 (W.D. Ark. 1978).

No quorum court member or the county judge could be found liable in damages for injuries resulting from a fire in the county jail unless he personally knew that the jail was left completely unattended for more than insubstantial amounts of time or unless the sheriff notified the court of the need for an additional jailer and the individual court member, fully informed, deliberately voted against appropriating the necessary funds, if the funds could have been appropriated or allocated without violating any statutory provision. *Hamilton v. Covington*, 445 F. Supp. 195 (W.D. Ark. 1978).

12-41-508. Duty of grand jury.

(a) It shall be the duty of the grand jury at each term of the circuit court to visit the jail of their county, to examine into the condition thereof, to inquire into the treatment of the prisoners, and to report thereon to the circuit court.

(b) In their report the grand jury shall recommend improvements as may be necessary to put the jail in complete repair and render it secure.

History. Rev. Stat., ch. 81, § 8; C. & M. Dig., § 6213; Pope's Dig., § 8176; A.S.A. 1947, § 46-408.

RESEARCH REFERENCES

Ark. L. Rev. Gingerich, *The Arkansas Grand Jury*, etc., 40 Ark. L. Rev. 55.

CASE NOTES**Inmate Injuries.**

Since the responsibility for the condition of county jails rests with the sheriff under § 12-41-502 and with the grand jury under this section, members of the quorum court could not be found liable in

damages for injuries resulting from a fire in the county jail unless they personally knew that the jail was left completely unattended for more than insubstantial amounts of time. *Hamilton v. Covington*, 445 F. Supp. 195 (W.D. Ark. 1978).

12-41-509. Commitment to jail of another county.

(a)(1) The county sheriff of any county in this state, where there is no jail in his or her county or the jail of the county is insufficient, may commit any person in his or her custody, either on criminal or civil process, to a jail in some other county located in this state, provided the county sheriff of the other county consents to receiving the person in custody.

(2) It shall be the duty of the county sheriff or keeper of the jail of the county to receive the person so committed and keep him or her safely, subject to the order of the circuit court of the county in which the prisoner was committed.

(b) It shall be the duty of the county sheriff committing any person to another county for any criminal offense to notify the circuit court judge of the county in which the prisoner is to be tried of the committing of the person to the jail of the other county. The county sheriff shall transmit to the judge at the same time the cause of the capture and detention of the person.

(c)(1) It shall be the duty of the circuit court judge, at least fifteen (15) days preceding the first day of the next term of the circuit court of the county in which the person is to be tried, to issue a writ of habeas corpus. The writ shall be directed to the county sheriff or keeper of the jail of the county in which the person may be committed, commanding the county sheriff or keeper of the jail to have the body of the person, together with the day and cause of the person's capture and detention,

before the circuit court of the proper county for the trial of the offense on the first day of the next term of the circuit court.

(2) It shall be the duty of the county sheriff or jailer to deliver, or cause to be delivered, the prisoner on the day and at the place mentioned in the writ.

(3) Any county sheriff or jailer failing or neglecting to make return of the writ and have there the body of the person, according to the command of the writ, shall be deemed guilty of a contempt and shall be liable to be attached therefor. The county sheriff or jailer shall forfeit to the person or party any sum not exceeding five hundred dollars (\$500), to be recovered by the injured party by an action founded on this subchapter.

(d) For committing the person and for executing such writ of habeas corpus, the county sheriff shall be entitled to the same fees as are provided by law for similar services.

(e)(1) In all cases in which a prisoner is committed from another county for a criminal offense under the provisions of this subchapter, the county shall pay the expenses in the same manner as if the commitment had been in the county where the offense was committed.

(2) In civil suits the plaintiff or defendant shall pay the expenses in the same manner as if the imprisonment had taken place in the county where the suit was commenced.

History. Rev. Stat., ch. 81, §§ 17-23; C. §§ 8181-8187; A.S.A. 1947, §§ 46-413 — & M. Dig., §§ 6218-6224; Pope’s Dig., 46-419; Acts 1993, No. 456, § 1.

CASE NOTES

ANALYSIS

Constitutionality.
In General.
Interference with Counsel.
Liability for Expenses.
Liberty Interest.

Constitutionality.

The due process clause does not in itself protect a convicted prisoner from transfer between jails in the state prison systems, nor does it protect a pretrial detainee from transfer from one prison to another; however, a detainee’s constitutional rights may be infringed where the transfer interferes with his right to assistance of counsel, where the state has created a liberty interest in remaining in a particular facility, or where the nature and duration of the new form of incarceration exceeds the original purpose for which he was detained. *Ervin v. Busby*, 992 F.2d 147 (8th Cir. 1993), cert. denied, 510 U.S. 879, 114 S. Ct. 220, 126 L. Ed. 2d 176 (1993).

In General.

This section is directory. *Hart v. Howard County*, 44 Ark. 560 (1884).

Interference with Counsel.

After a transfer, evidence of actual prejudice is necessary to show interference with the right to counsel. *Ervin v. Busby*, 992 F.2d 147 (8th Cir. 1993), cert. denied, 510 U.S. 879, 114 S. Ct. 220, 126 L. Ed. 2d 176 (1993).

Liability for Expenses.

When a prisoner is taken for safekeeping to the jail of some county not in the same circuit, the county from whose jail he is so taken is liable for his expenses there, including necessary medical attention, to the same extent as if committed to a jail in the same circuit. *Hart v. Howard County*, 44 Ark. 560 (1884).

Liberty Interest.

This section does not contain mandatory language which limits prison officials’ discretion, and thus it does not create a

protectable liberty interest. *Ervin v. Busby*, 992 F.2d 147 (8th Cir. 1993), cert. denied, 510 U.S. 879, 114 S. Ct. 220, 126 L. Ed. 2d 176 (1993).

Cited: *Martin v. State*, 162 Ark. 282, 257 S.W. 752 (1924).

12-41-510. United States prisoners.

(a)(1) It shall be the duty of the keeper of the jail in each county and of the keeper or warden at the penitentiary walls to receive into his or her custody all persons who may, from time to time, be committed to his or her custody under the authority of the United States.

(2) The keeper of the jail shall safely keep every such prisoner according to the warrant or precept of such commitment until he or she shall be discharged by the due course of the laws of the United States.

(b) The keeper of every jail shall be subject to the same penalties for any neglect or failure of duty provided for in this section as he or she would be subject to by the laws of this state for the like neglect or failure in case of a prisoner committed under the authority of the laws of this state.

History. Rev. Stat., ch. 81, §§ 13-15; C. & M. Dig., §§ 6214-6216; Acts 1927, No. 366, § 3; Pope's Dig., §§ 8177-8179; A.S.A. 1947, §§ 46-409 — 46-411; Acts 1997, No. 1097, § 4.

12-41-511. Imprisonment of county sheriff.

(a) The county sheriff may be imprisoned in the jail of his or her own county.

(b) For the time the county sheriff shall be confined, the county coroner shall have the custody, rule, keeping, and charge of the jail and shall, by himself or herself and his or her securities, be answerable for the faithful discharge of his or her duties in that office.

History. Rev. Stat., ch. 81, § 24; C. & M. Dig., § 6225; Pope's Dig., § 8188; A.S.A. 1947, § 46-420.

SUBCHAPTER 6 — COUNTY JAIL REVENUE BOND ACT OF 1981

SECTION.

- 12-41-601. Title.
- 12-41-602. Definitions.
- 12-41-603. Construction.
- 12-41-604. Adoption of ordinance.
- 12-41-605. County jail boards.
- 12-41-606. Bonds — Authority to issue.
- 12-41-607. Bonds — Authorizing resolution.
- 12-41-608. Bonds — Contract between parties — Enforcement.
- 12-41-609. Bonds — Terms and conditions.

SECTION.

- 12-41-610. Bonds — Sale.
- 12-41-611. Bonds — Coupons — Execution — Seal.
- 12-41-612. Bonds — Liability on.
- 12-41-613. Bonds — Pledge of revenues — Funds.
- 12-41-614. Bonds — Tax exemption.
- 12-41-615. Bonds — Investment by public entities.
- 12-41-616. Creation of rights.
- 12-41-617. [Repealed.]

Effective Dates. Acts 1981, No. 879, § 16: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the jail facilities in a number of counties in this state are inadequate or in many instances do not meet the standards for public jails as provided by law and that the immediate passage of this act is necessary to establish a procedure whereby counties, in the manner authorized in this act, may issue county jail and jail facilities revenue bonds to secure funds for construction, reconstruction, improvement, expansion, repair, and equipping of county jails and jail facilities. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 226, § 3: Feb. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that some counties have levied additional court costs under Act 879 of 1981 but have not issued bonds under that

act; that revenues derived from such court costs in such instances should be deposited in the county general fund if so desired; and that this act is immediately necessary to grant such authority. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 904, § 28: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the language of certain court cost statutes lacks uniformity; that such lack of uniformity is detrimental to the proper collection of such court costs; and that such language should be standardized to promote the proper collection of such costs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

12-41-601. Title.

This subchapter may be referred to and cited as the "County Jail Revenue Bond Act of 1981".

History. Acts 1981, No. 879, § 1; A.S.A. 1947, § 46-429.

12-41-602. Definitions.

As used in this subchapter:

(1) "Board" means the county jail board established under the provisions of this subchapter;

(2) "Bonds" means bonds and any series of bonds authorized by and issued pursuant to the provisions of this subchapter;

(3)(A) "Construct" means to acquire, construct, reconstruct, remodel, install, and equip any lands, buildings, structures, improvements, or other real, personal, or mixed property useful in connection with the county jail or jail facilities, and to make other necessary expenditures in connection therewith, by such methods and in such manner as may be authorized by law.

(B) "Construct" also includes payment or provision for expenses incidental thereto;

(4) "Expansion" means any additions, extensions, or improvements to the county jail or jail facilities and may include any necessary or

appropriate remodeling and improvement to the present jail and its facilities, with appropriate equipment and furnishings, as determined by the board;

(5) "Fees" means the fees authorized in this subchapter to be collected as additional costs in all convictions or any commitments to the county jail in the circuit court, probate division of circuit court, or district courts of the county;

(6) "Jail" means the county jail and jail facilities of the county; and

(7) "Pledged revenues" means all revenues authorized by this subchapter to be pledged for the security and payment of the bonds.

History. Acts 1981, No. 879, § 2; A.S.A. 1947, § 46-430.

12-41-603. Construction.

(a) This subchapter shall be construed liberally.

(b) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1981, No. 879, § 13; A.S.A. 1947, § 46-441.

12-41-604. Adoption of ordinance.

Any county quorum court desiring to construct or expand county jail and jail facilities in the manner authorized in this subchapter may adopt an ordinance to establish a county jail board and authorize the board to issue revenue bonds to construct or expand the county jail or jail facilities in the manner authorized in this subchapter.

History. Acts 1981, No. 879, § 4; A.S.A. 1947, § 46-432.

12-41-605. County jail boards.

(a) Any county electing to issue county jail revenue bonds under the provisions of this subchapter shall, by ordinance adopted by the quorum court, establish a county jail board consisting of the county judge, the county sheriff, and the county clerk.

(b) The county judge shall serve as chair of the board.

(c) The board is authorized and empowered to:

(1) Construct a county jail and jail facilities or provide for the expansion of the existing county jail or jail facilities on a site or sites selected by the board;

(2) Arrange for the housing of prisoners during the period in which any of the facilities are undergoing construction or expansion;

(3) Construct or cause to be constructed parking facilities to serve the county jail and jail facilities and the public having business therein;

(4) Obtain the necessary funds for accomplishing the board's powers, purposes, and authorities;

(5) Purchase, lease, or rent and receive bequests or donations of or otherwise acquire, sell, trade, or barter any real, personal, or mixed property and convert into money or property any property not needed or which cannot be used in its then current form;

(6) Contract and be contracted with, apply for, receive, accept, and use any moneys and property from the United States Government, any state agency, any state or governmental body or political subdivision, any public or private corporation or organization of any nature, or any individual;

(7) Invest and reinvest any of the board's moneys and securities as authorized by law; and

(8) Take such other action, not inconsistent with law, as may be necessary and desirable to carry out the power, purposes, and authorities set forth in this subchapter and to carry out the intent of this subchapter.

(d) The board is authorized to employ an architect to prepare the lands, specifications, and estimates of costs for the construction or expansion of the county jails and jail facilities and to supervise and inspect such construction.

(e) In addition, the board is authorized to engage and pay professional, technical, and other help it shall deem to be necessary or desirable in assisting in effectively carrying out the powers, purposes, and authorities conferred and set forth in this subchapter.

History. Acts 1981, No. 879, §§ 3, 12;
A.S.A. 1947, §§ 46-431, 46-440.

12-41-606. Bonds — Authority to issue.

The county jail board is authorized and empowered to issue bonds, at one (1) time or in series from time to time, and to use the proceeds thereof, together with any other funds, for financing the cost of construction or expansion of the county jail or jail facilities, together with all expenses incidental to and reasonably necessary in connection therewith, the expenses of the issuance of the bonds, the creating and maintenance of reserves to secure the payment of the bonds, if the board deems it necessary or desirable, and for providing for the payment of the interest on the bonds, if necessary or desirable, until sufficient funds are available therefor out of pledged revenues.

History. Acts 1981, No. 879, § 6; A.S.A.
1947, § 46-434.

12-41-607. Bonds — Authorizing resolution.

(a) The bonds shall be authorized by resolution of the county jail board.

(b) The authorizing resolution may contain any terms, covenants, and conditions that are deemed necessary or desirable by the board, including without limitation, those pertaining to:

- (1) The creation and maintenance of various funds and reserves;
- (2) The nature and extent of the security;
- (3) The issuance of additional series of bonds and the priority of lien and pledge in that event; and
- (4) The rights, duties, and obligations of the board and of the holders and registered owners of the bonds, all as the board shall determine.

(c) The authorizing resolution may provide for the execution of a trust indenture, with a bank or trust company located within or without the State of Arkansas, containing the terms, covenants, and conditions authorized by this subchapter.

History. Acts 1981, No. 879, § 6; A.S.A. 1947, § 46-434.

12-41-608. Bonds — Contract between parties — Enforcement.

(a) Each authorizing resolution or trust indenture, together with this subchapter and the ordinance of the quorum court acting pursuant to this subchapter, shall constitute a contract by and between the county jail board and the holders and registered holders of the bonds issued pursuant to this subchapter.

(b) The contract and all covenants, agreements, and obligations therein shall be properly performed in strict accordance with the terms and provisions thereof.

(c) The covenants, agreements, and obligations of the board may be enforced by mandamus or other appropriate proceedings at law or in equity.

History. Acts 1981, No. 879, § 9; A.S.A. 1947, § 46-437.

12-41-609. Bonds — Terms and conditions.

(a) As the county jail board shall determine, the bonds may:

- (1) Be coupon bonds, payable to bearer, or be registrable as to the principal only, or be registrable as to both principal and interest;
- (2) Contain exchange provisions;
- (3) Be in a form and denomination as the board determines;
- (4) Have such date or dates as the board determines;
- (5) Be stated to mature at a time or times as the board determines;
- (6) Bear interest payable at times and at rate or rates as the board determines;
- (7) Be made payable at places within and without the State of Arkansas;
- (8) Be made subject to terms of redemption in advance of maturity at times and at prices as the board determines; and
- (9) Contain other terms and conditions as the board determines.

(b) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration of ownerships as set forth in subsection (a) of this section.

(c) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and under the provisions of the ordinance of the quorum court authorizing the issuance thereof.

History. Acts 1981, No. 879, §§ 6, 7;
A.S.A. 1947, §§ 46-434, 46-435.

12-41-610. Bonds — Sale.

The bonds may be sold in such manner and at such price, including sale at a discount, as the county jail board may accept.

History. Acts 1981, No. 879, § 6; A.S.A.
1947, § 46-434.

12-41-611. Bonds — Coupons — Execution — Seal.

(a) Bonds issued pursuant to this subchapter shall be executed by the chair of the county jail board and the secretary of the board by manual or facsimile signature with at least one (1) manual signature.

(b) The coupons attached to the bonds shall be executed by the facsimile signature of the chair of the board.

(c) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signature shall, nevertheless, be valid and sufficient for all purposes.

(d) Each bond shall be sealed with the seal of the board.

History. Acts 1981, No. 879, § 6; A.S.A.
1947, § 46-434.

12-41-612. Bonds — Liability on.

(a) Bonds issued pursuant to this subchapter shall be obligations only of the county jail board, and in no event shall they constitute any indebtedness for which the faith and credit of the county issuing the bonds or any of its revenues, or of the state or any of its revenues, as used in Arkansas Constitution, Amendment 20, are pledged.

(b) The bonds shall not be secured by a mortgage or lien on any land, buildings, or property belonging to the county.

(c) No member of the board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into or action taken in carrying out the powers, purposes, or authority of this subchapter or of the ordinance adopted by the quorum court unless he or she shall have acted with a corrupt intent.

History. Acts 1981, No. 879, § 7; A.S.A.
1947, § 46-435.

12-41-613. Bonds — Pledge of revenues — Funds.

(a) The principal, premiums, if any, interest, and trustee's and paying agent's fees in connection with all bonds issued under this subchapter shall be secured by a lien on and pledge of the fee revenues and the gross revenues derived from the fees levied under the provisions of § 12-41-617 [repealed].

(b) Such pledged revenues are specifically declared to be cash funds, restricted in their use and dedicated and to be used solely as provided in this subchapter.

(c)(1) There is created a fund designated "county jail revenue bond fund" to be maintained at a depository as shall be specified by the county jail board. The county jail revenue bond fund shall be a trust fund.

(2) After the issuance of any bonds under this subchapter, the moneys in the county jail revenue bond fund shall be applied solely for the payment of the principal of, premiums, if any, interest on, trustee's and paying agent's fees in connection with the bonds at maturity and at redemption prior to maturity, except moneys that are withdrawn therefrom pursuant to the subsequent provisions of this section, all as shall be specified and subject to the terms and conditions set forth in the authorizing resolution or trust indenture.

(d) The pledged revenue shall not be deposited into the county treasury but, as and when received, shall be deposited into the county jail revenue bond fund.

(e) The principal of, premiums, if any, interest on, and trustee's and paying agent's fees in connection with the bonds shall be payable solely from the moneys in the county jail revenue bond fund and the moneys required by this subchapter to be deposited into the county jail revenue bond fund.

(f) The board is directed to insert appropriate provisions in the authorizing resolution or trust indenture for the investment and reinvestment of moneys in the county jail revenue bond fund in securities selected by the board, and all income derived from such investments shall be and become part of the county jail revenue bond fund.

History. Acts 1981, No. 879, § 8; A.S.A. 1947, § 46-436.

12-41-614. Bonds — Tax exemption.

Bonds issued under the provisions of this subchapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes, and this exemption shall include income, inheritance, and estate taxes.

History. Acts 1981, No. 879, § 10; A.S.A. 1947, § 46-438.

12-41-615. Bonds — Investment by public entities.

(a) Any municipality, or any board, commission, or other governing authority established by ordinance of any municipality, or the governing authorities, respectively, of the local firefighters pension and relief fund and police officer's pension and relief fund of any such municipality or the governing authority of any retirement system created by the General Assembly or any agency in its discretion may invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this subchapter.

(b) Any bonds issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1981, No. 879, § 11;
A.S.A. 1947, § 46-439.

12-41-616. Creation of rights.

This subchapter shall not create any right of any character, and no right of any character shall arise under the provisions of this subchapter, unless and until the bonds authorized by this subchapter, or the initial series, shall have been sold and delivered by the county jail board.

History. Acts 1981, No. 879, § 14;
A.S.A. 1947, § 46-442.

12-41-617. [Repealed.]

Publisher's Notes. This section, concerning the county jail revenue bond fund, was repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (1st Ex. Sess.), No. 13, § 4. The section was de-

rived from Acts 1981, No. 879, § 5; 1983, No. 226, § 1; 1985, No. 874, § 1; A.S.A. 1947, § 46-433; Acts 1989, No. 96, § 1; 1991, No. 904, §§ 3, 20.

SUBCHAPTER 7 — JAIL BOARDS — REVENUE BONDS

SECTION.

- 12-41-701. Definitions.
- 12-41-702. Method supplemental.
- 12-41-703. Adoption of ordinance.
- 12-41-704. Jail boards.
- 12-41-705. Bonds — Authority to issue.
- 12-41-706. Bonds — Authorizing resolution.
- 12-41-707. Bonds — Contract between parties — Enforcement.
- 12-41-708. Bonds — Terms and conditions.
- 12-41-709. Bonds — Sale — Disposition of proceeds.
- 12-41-710. Bonds — Coupons — Execution — Seal.

SECTION.

- 12-41-711. Bonds — Liability on.
- 12-41-712. Bonds — Pledge of revenues — Funds.
- 12-41-713. Bonds — Tax exemption.
- 12-41-714. Bonds — Investments by public entities.
- 12-41-715. Fees, costs, etc. — Disposition.
- 12-41-716. Use of board jail fund for supervision and transportation of inmates.
- 12-41-717. Contract with governmental entities — Authority to create boards.
- 12-41-718. Sole and exclusive law.
- 12-41-719. Repayment of debt.

Effective Dates. Acts 1983, No. 918, § 16: Mar. 30, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the act of driving a motor vehicle while under the influence of intoxicating alcoholic beverages or drugs constitutes a serious and immediate threat to the safety of all citizens of this state, and that increasing the penalty for this dangerous conduct may serve as a deterrent to such behavior. Further, it is found that increased income derived from the levying of such penalties can best be utilized to provide immediate alcohol and drug safety and rehabilitation and treatment programs both to prevent an increase in the use of intoxicating alcoholic beverages and drugs and to rehabilitate persons convicted of related offenses. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 2003, No. 1772, § 5: Apr. 22, 2003. Emergency clause provided: "It is found and determined by the General Assembly

that the counties, municipalities, public instrumentalities and other governmental entities of the State of Arkansas are experiencing severe jail overcrowding, and that existing jail facilities may not be in compliance with applicable state and federal regulations. It is further recognized that funding for jail renovation, improvement, and construction is extremely limited and oftentimes can be funded only through the implementation of new sales taxes, and that the failure to immediately address this problem could result in the possible closure of existing jail facilities, and the release of incarcerated persons prior to the schedule expiration of their terms. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-41-701. Definitions.

As used in this subchapter:

(1) "Board" means the county jail board, municipal jail board, or public instrumentality jail board, as the case may be, established by ordinance or resolution of the quorum court of the county or the governing body of the municipality or public instrumentality under the provisions of this subchapter;

(2) "Bonds" means bonds, series of bonds, or other evidences of indebtedness authorized by and issued by a board pursuant to the provisions of this subchapter;

(3)(A) "Construct" or "construction" means to acquire, construct, reconstruct, remodel, install, and equip any lands, buildings, structures, improvements, or other real, personal, or mixed property used in connection with a jail and to make other necessary expenditures in connection therewith, by such methods and in such manner as may be authorized by law.

(B) "Construct" or "construction" also includes payment or provision for payment of expenses incidental thereto;

(4)(A) “Expand” or “expansion” means to add, renovate, extend, or improve a jail and may include any necessary or appropriate remodeling or improvement to a present jail and shall include appropriate equipment and furnishings as determined by the board.

(B) “Expand” or “expansion” also includes payment or provision for payment of expenses incidental to expansion;

(5) “Fines” or “fines and penalties” means the fines, penalties, bonds against fines, court costs, filing fees, other court fees, and other sums payable by judicial order, statute, ordinance, or otherwise imposed by law and collected by a county, municipality, or public instrumentality or otherwise;

(6)(A) “Jail” means a county jail or jails and jail facilities of a county, a municipal jail or jails and jail facilities of a municipality, or a public instrumentality jail or jails and jail facilities of a public instrumentality in this state.

(B) “Jail” also means a jail constructed and operated under a cooperative agreement between any two (2) or more municipalities, counties, or public instrumentalities in any combination for the housing of their respective misdemeanor incarcerants and other incarcerants awaiting trial;

(7) “Jail facilities” means all property of any nature, whether personal or real, tangible or intangible, related in any way to a jail and its functions;

(8) “Municipality” means any city of the first class or city of the second class and any incorporated town in this state;

(9) “Pledged revenues” means all revenues allocated by this subchapter to be pledged for the security and payment of the bonds; and

(10) “Public instrumentality” means any public facilities board, regardless of whether formed by county or municipal ordinance, and any other governmental or political subdivision of this state.

History. Acts 1983, No. 918, § 6; A.S.A. 1947, § 46-451; Acts 2001, No. 561, § 32; 2003, No. 1772, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Criminal Law, 24 U. Ark. Little Rock L. Rev. 429.

12-41-702. Method supplemental.

The method set forth in this subchapter for construction, renovation, or expansion of jails shall be supplemental to any other method authorized by law for construction, renovation, or expansion of jails.

History. Acts 1983, No. 918, § 5; A.S.A. 1947, § 46-452; Acts 2003, No. 1772, § 1.

12-41-703. Adoption of ordinance.

Any county quorum court or governing body of a municipality or public instrumentality desiring to construct, renovate, or expand a jail in the manner authorized in this subchapter may adopt an ordinance or resolution to establish a county jail board, municipal jail board, or public instrumentality jail board and to authorize the board to issue revenue bonds to construct, renovate, or expand the jail in the manner authorized in this subchapter.

History. Acts 1983, No. 918, § 8; A.S.A. 1947, § 46-454; Acts 2003, No. 1772, § 1.

12-41-704. Jail boards.

(a)(1) Any county, municipality, or public instrumentality electing to form a county jail board, municipal jail board, or public instrumentality jail board for the purpose of issuing bonds under the provisions of this subchapter, shall, by ordinance or resolution adopted by the county quorum court or by the governing body of the municipality or public instrumentality, establish a board consisting of such members, not fewer than three (3) nor more than seven (7) in number, as provided in the ordinance or resolution.

(2) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty by the county quorum court, governing body of the municipality, or public instrumentality that created the board after reasonable notice and an opportunity for a hearing concerning the alleged grounds for removal.

(b) The county judge of the county shall serve as a member of a board created by the county, and the principal executive officer of the municipality or public instrumentality shall serve as a member of a board created by a municipality or public instrumentality unless the county judge or principal executive officer is removed as provided in this subchapter.

(c) The board is authorized and empowered to:

(1) Construct a jail or provide for the renovation or expansion of an existing jail on a site or sites selected by the board;

(2) Enter into contracts with the United States Government, any state agency, state or governmental body or political subdivision, public or private corporation or other legal entity or any individual or a combination of any of these entities and individuals to provide for the design, financing, construction, expansion, operation, and maintenance of all or any portion of a jail or for any combination of the services and functions;

(3) Arrange for the housing of incarcerated persons during the period in which any such jail is undergoing construction, renovation, or expansion;

(4) Construct or cause to be constructed parking facilities to serve the jail and the public having business therein;

(5) Obtain the necessary funds for accomplishing its powers, purposes, and authority;

(6) Purchase, lease, or rent and receive bequests or donations of or otherwise acquire, sell, trade, or barter any real, personal, or mixed property and convert into money or any property not needed or which cannot be used in its then current form;

(7) Contract and be contracted with, apply for, receive, accept, and use any moneys and property from the United States Government, any state agency, any state or governmental body or political subdivision, any public or private corporation of any nature, or any individual;

(8) Enter into long-term or short-term contracts with counties, municipalities, public instrumentalities, the State of Arkansas, agencies of the federal government, and other public entities under which the board shall provide nightly or other periodic housing of these entities' misdemeanant or other incarcerants for fee compensation or other consideration;

(9) Offer incarcerants the option in lieu of incarceration to participate in community service programs and all other forms of voluntary labor;

(10) To the extent allowed under applicable law, enter into contracts with third party governmental entities under which the board may receive compensation for supplying to those entities with the voluntary services and labor of incarcerants;

(11) Enter into jail management contracts with third party governmental or private organizations upon terms and conditions that the board determines appropriate;

(12) Pledge to the repayment of debt any and all contract receivables and revenues of any kind that are payable to the board;

(13) Mortgage real property and grant a security interest in all personal, intangible, or other property, including all contract receivables and revenues of any kind that are payable to the board;

(14) Borrow funds that shall be available for board use with an obligation to repay;

(15) Invest and reinvest any of its moneys and securities as authorized by law; and

(16) Take such other action not inconsistent with law as may be necessary and desirable to carry out the power, purposes, and authority set forth in this subchapter and to carry out the intent of this subchapter.

History. Acts 1983, No. 918, § 7; A.S.A. 1947, § 46-453; Acts 2003, No. 1772, § 1.

12-41-705. Bonds — Authority to issue.

The county jail board, municipal jail board, or public instrumentality jail board is authorized and empowered to issue bonds at one (1) time or

in series from time to time and to use the proceeds thereof, together with any other funds, for financing the cost of construction, renovation, expansion of the jail together with all expenses incidental to and reasonably necessary in connection therewith, the expenses of the issuance of the bonds, the creating and maintenance of reserves to secure the payment of the bonds if the board deems it necessary or desirable, and for providing for the payment of the interest on the bonds if necessary or desirable until sufficient funds are available therefor out of pledged revenues.

History. Acts 1983, No. 918, § 10; A.S.A. 1947, § 46-456; Acts 2003, No. 1772, § 1.

12-41-706. Bonds — Authorizing resolution.

(a) The bonds shall be authorized by resolution of the county jail board, municipal jail board, or public instrumentality jail board.

(b) The authorizing resolution, as the board shall determine, may contain any terms, covenants, and conditions that are deemed necessary or desirable by the board including, without limitation, those pertaining to the:

(1) Creation and maintenance of various funds and reserves;

(2) Nature and extent of the security;

(3) Issuance of additional series of bonds and the priority of lien and pledge in that event; and

(4) Rights, duties, and obligations of the board and of the holders and registered owners of the bonds.

(c) The authorizing resolution may provide for the execution of a trust indenture with a bank or trust company located within or outside the State of Arkansas containing appropriate terms, covenants, and conditions.

History. Acts 1983, No. 918, § 10; A.S.A. 1947, § 46-456; Acts 2003, No. 1772, § 1.

12-41-707. Bonds — Contract between parties — Enforcement.

(a) Together with this subchapter and the ordinance or resolution of the quorum court or the governing body of the municipality or public instrumentality acting pursuant to this subchapter, each authorizing resolution or trust indenture shall constitute a contract by and between the county jail board, municipal jail board, or public instrumentality jail board and the holders and registered owners of the bonds issued pursuant to this subchapter.

(b) The contract and all covenants, agreements, and obligations therein shall be properly performed in strict accordance with the terms and provisions thereof.

(c) The covenants, agreements, and obligations of the bonds may be enforced by mandamus or other appropriate proceedings at law or in equity.

History. Acts 1983, No. 918, § 13; A.S.A. 1947, § 46-459; Acts 2003, No. 1772, § 1.

12-41-708. Bonds — Terms and conditions.

(a) As the county jail board, municipal jail board, or public instrumentality jail board shall determine, the bonds:

- (1) Shall be registrable as to both principal and interest;
- (2) May contain exchange provisions;
- (3) May be in a form and denomination as the board determines;
- (4) May be payable on a date or dates as the board determines;
- (5) May be stated to mature at a time or times as the board determines;
- (6) May bear interest payable at such times and at such rate or rates as the board determines;
- (7) May be made payable at places within and without the State of Arkansas;
- (8) May be made subject to terms of redemption in advance of maturity at times and at prices as the board determines; and
- (9) May contain other terms and conditions as the board determines.

(b) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration or ownerships as set forth in subsection (a) of this section.

(c) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and under the provisions of the resolution of the board authorizing the issuance thereof.

History. Acts 1983, No. 918, §§ 10, 11; A.S.A. 1947, §§ 46-456, 46-457; Acts 2003, No. 1772, § 1.

12-41-709. Bonds — Sale — Disposition of proceeds.

(a) The bonds may be sold in such manner and at such prices, including sale at discount, as the county jail board, municipal jail board, or public instrumentality jail board may accept.

(b) The proceeds derived from the sale of revenue bonds by the board under the provisions of this subchapter shall be deposited into a board jail fund and shall be used for the purposes of constructing or expanding jails, and for all other expenses incidental to the issuance of the bonds, as authorized in this subchapter.

History. Acts 1983, No. 918, §§ 10, 15; A.S.A. 1947, §§ 46-456, 46-461; Acts 2003, No. 1772, § 1.

12-41-710. Bonds — Coupons — Execution — Seal.

(a) Bonds issued pursuant to this subchapter shall bear the manual or facsimile signature of the presiding officer of the county jail board, municipal jail board, or public instrumentality jail board and the manual authenticating signature of the trustee or paying agent of the bonds if the trustee or paying agent exists.

(b) In case any of the officers whose signatures appear on the bonds shall cease to be officers before delivery of the bonds, their signature shall, nevertheless, be valid and sufficient for all purposes.

(c) Each bond shall be sealed with the seal of the board.

History. Acts 1983, No. 918, § 10; A.S.A. 1947, § 46-456; Acts 2003, No. 1772, § 1.

12-41-711. Bonds — Liability on.

(a)(1) Bonds issued pursuant to this subchapter shall be obligations only of the issuing county jail board, municipal jail board, or public instrumentality jail board.

(2) In no event shall they constitute any indebtedness for which the faith and credit of the county, municipality, or public instrumentality that created the board, any of their respective revenues, or of the State of Arkansas or any of its revenues, as used in Arkansas Constitution, Amendment 20, are pledged except that the fines and penalties described under this subchapter may be pledged.

(b) The bonds shall not be secured by a mortgage or lien on any land, buildings, or property belonging to the county, municipality, or public instrumentality that created the board but may be secured by the real and personal property owned by the board and all other revenues of whatever nature that are received by the board or otherwise generated as a result of the board's activities.

(c) No member of the board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into or action taken in carrying out the powers, purposes, or authority of this subchapter or of the ordinance or resolution adopted by the quorum court or governing body of the municipality or public instrumentality unless he or she shall have acted with a corrupt intent.

History. Acts 1983, No. 918, § 11; A.S.A. 1947, § 46-457; Acts 2003, No. 1772, § 1.

12-41-712. Bonds — Pledge of revenues — Funds.

(a)(1) The principal, premiums, if any, interest on, and trustees' and paying agents' fees in connection with all bonds issued under this subchapter shall be secured by a lien on and pledge of:

(A) The fee revenues and the gross revenues derived from revenues collected from fines or penalties for convictions of the offenses as defined in this subchapter;

(B) All real property and personal property owned by the county jail board, municipal jail board, or public instrumentality jail board; and

(C) All other collateral identified in the trust indenture pursuant to which the bonds are issued.

(2) The pledged revenues and the principal and interest are specifically declared to be cash funds, restricted in their use and dedication, and to be used solely as provided in this subchapter.

(3) Bonds may additionally be secured and collateralized by:

(A) The board's pledge of contract revenue receivables realized through the execution of contracts with third parties for incarcerant housing;

(B) Income received from supplying third parties with incarcerant services and labor; and

(C) All other revenues and income that the board may realize through its operations that are otherwise expressly pledged and identified in the bonds' trust indenture or authorizing resolution.

(b) There is created a fund designated the jail revenue bond fund, with respect to bonds issued under this subchapter to be maintained at such depository as shall be specified by the board.

(c) The fund shall be a trust fund and, after the issuance of any bonds pursuant to this subchapter, the moneys therein shall be applied for the payment of the principal of, premiums, if any, and interest on the bonds, trustees' fees, paying agents' fees, and any other fees in connection with the bonds at maturity and at redemption prior to maturity, except moneys that are withdrawn therefrom pursuant to § 12-41-709(b), all as shall be specified and subject to the terms and conditions set forth in the authorizing resolution or trust indenture.

(d) The pledged revenues shall not be deposited into the county treasury, municipal treasury, or public instrumentality treasury but, when received, shall be deposited into the appropriate jail revenue bond fund.

(e) The principal, premiums, if any, and interest on the bonds and trustees' fees, paying agents' fees, and any other fees in connection with the bonds may be paid from the moneys in the jail revenue bond fund and the moneys required by this subchapter to be deposited into the jail revenue bond fund.

(f) The board is directed to insert appropriate provisions in the authorizing resolution or trust indenture for the investment and reinvestment of moneys in the jail revenue bond fund in securities selected by the board, and all income derived from the investment shall be and become part of the jail revenue bond fund.

(g) Any municipality, county, public instrumentality, or other governmental entity may pledge all or any portion of its fines, penalties, bonds against fines, court costs, filing fees, other court fees, and other sums

payable by judicial order, statute, ordinance, or otherwise imposed by law and collected by the entity towards the repayment of any debt issued by a board or any public facilities board operating, owning, or administering a jail facility.

History. Acts 1983, No. 918, § 12; A.S.A. 1947, § 46-458; Acts 2003, No. 1772, § 1.

12-41-713. Bonds — Tax exemption.

Bonds and other evidences of indebtedness issued under the provisions of this subchapter and the interest thereon shall be exempt from all state, county, and municipal taxes, and this exemption shall include income, inheritance, and state taxes.

History. Acts 1983, No. 918, § 13; A.S.A. 1947, § 46-459; Acts 2003, No. 1772, § 1.

12-41-714. Bonds — Investments by public entities.

(a) Any municipality, board, commission, governing authority established by ordinance of any municipality, or governing authorities, respectively, of the local firefighter's pension and relief fund and police officer's pension and relief fund of any such municipality, the governing authority of any retirement system created by the General Assembly, or any agency may invest any of its funds not immediately needed for its purposes in bonds and other evidences of indebtedness issued under the provisions of this subchapter.

(b) Any bonds issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1983, No. 918, § 14; A.S.A. 1947, § 46-460; Acts 2003, No. 1772, § 1.

12-41-715. Fees, costs, etc. — Disposition.

(a) Any county, municipality, or public instrumentality may, by ordinance or resolution, provide that all or any identified portion of the revenues derived by the county, municipality, or public instrumentality from all or any identified portion of the fines or penalties as defined in this subchapter shall be remitted to and deposited by the county treasurer, municipal treasurer, or public instrumentality treasurer into one (1) or more banks doing business in the county, municipality, or county or municipality in which the public instrumentality is primarily located, to the credit of a jail revenue bond fund that may be created in connection with the issuance of debt to be used solely for the purposes as provided in this subchapter.

(b) If any person charged with a felony or misdemeanor for which a fine or penalty, as defined in this subchapter, is imposed shall post bond

and forfeit it upon failure to appear on the date set for trial, the entire amount or any identified portion of the bond forfeiture may be deposited into the jail revenue bond fund as provided in this subchapter.

(c)(1) All revenues derived from the fines collected under the provisions of this subchapter are determined to be fee revenues and are declared to be cash funds.

(2) The revenues shall not be deposited into the county treasury, municipal treasury, or public instrumentality treasury but shall be deposited into the bank or banks selected by the county jail board, municipal jail board, or public instrumentality jail board.

(d) The fee revenues as provided in this section shall be collected and applied as provided in this subchapter until the principal, premiums, if any, and interest on bonds issued under this subchapter, with trustees' and paying agents' fees shall be paid or adequate provision made for their payment.

History. Acts 1983, No. 918, § 9; A.S.A. 1947, § 46-455; Acts 2003, No. 1772, § 1.

12-41-716. Use of board jail fund for supervision and transportation of inmates.

In addition to any other purposes for which funds in a county jail board jail fund, municipal jail board jail fund, or public instrumentality jail board jail fund may be used, the funds may be used for the transportation and supervision of inmates assigned to outside work projects or for transporting inmates to a Department of Correction facility, as determined by the board.

History. Acts 1997, No. 643, § 1; 2003, subchapter" in §§ 12-41-701 — 12-41-715 No. 1772, § 1. may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this

12-41-717. Contract with governmental entities — Authority to create boards.

(a) Each county, municipality, public instrumentality, and other governmental entity of this state is authorized and empowered, upon ordinance or resolution of the governing body, to enter into long-term or short-term contracts with a county jail board, municipal jail board, or public instrumentality jail board under which the board provides nightly or other periodic housing of the entity's misdemeanants or other incarcerants for fee compensation or other consideration.

(b)(1) Each county, municipality, and public instrumentality is authorized and empowered to adopt ordinances or resolutions that provide for the creation of boards under this subchapter.

(2) The boards shall constitute and comprise political subdivisions of the county or municipality that creates the boards or, in the case of public instrumentality boards, political subdivisions of the county or

municipality that created the public instrumentality that creates the boards.

History. Acts 2003, No. 1772, § 2.

12-41-718. Sole and exclusive law.

(a) Except as provided under § 12-41-702, the provisions of this subchapter are intended to solely and exclusively govern the manner in which a county jail board, municipal jail board, or public instrumentality jail board is organized, operated, managed, and administered.

(b) No other laws of this state are applicable to the boards.

History. Acts 2003, No. 1772, § 2.

12-41-719. Repayment of debt.

Any municipality, county, public instrumentality, or other governmental entity may pledge all or any portion of its fines, penalties, bonds against fines, court costs, filing fees, other court fees, and other sums payable by judicial order, statute, ordinance, or otherwise imposed by law and collected by the entity towards the repayment of any debt issued by a jail board or any public facilities board operating, owning, or administering a jail facility.

History. Acts 2003, No. 1772, § 4.

A.C.R.C. Notes. References to “this subchapter” in §§ 12-41-701 — 12-41-715 may not apply to this section, which was

enacted subsequently.

Cross References. Public facilities boards — Powers — Bidding and appraisal requirements, § 14-137-111.

SUBCHAPTER 8 — JUVENILE DETENTION FACILITIES COOPERATIVE DEVELOPMENT AND OPERATIONS ACT

SECTION.

- 12-41-801. Title.
- 12-41-802. Legislative findings and determinations.
- 12-41-803. Definitions.
- 12-41-804. Regional detention facilities.
- 12-41-805. [Repealed.]

SECTION.

- 12-41-806. Matching requirements.
- 12-41-807. Operating fund account.
- 12-41-808. Abatement of loan balances.
- 12-41-809. Juvenile detention centers or facilities.

A.C.R.C. Notes. Acts 1995, No. 899, §§ 1-9, as amended by Acts 1997, No. 76, § 1, provided: “SECTION 1. There is hereby created the Intergovernmental Juvenile Detention Council of the Tenth Judicial District, hereinafter referred to as the Council. The Council shall be composed of the county judge of each of the five counties comprising the district, the prosecuting attorney of the district, and one municipal mayor from each of the five

counties. The mayor member from each county shall be selected by majority vote of all the mayors of incorporated cities and towns in the county. The members of the Council shall select from their number a chairperson, vice chairperson and such other officers of the Council as it deems appropriate. The Council shall meet at least semiannually and at such other times as it shall deem necessary to carry out its powers, functions and duties.”

"SECTION 2. A majority of the full membership of the Council shall constitute a quorum for doing business. An affirmative vote of a majority of the membership shall be necessary to take any action. Members of the Council shall serve without compensation but may be reimbursed for actual expenses incurred in carrying out their official duties.

"SECTION 3. The Council shall have the following powers and duties:

"(a) To receive funds from the State of Arkansas, the U. S. Government, and any other source whatsoever, to be used for the construction, maintenance and operation of a juvenile detention facility in the Tenth Judicial District, hereinafter referred to as the detention facility.

"(b) To take title to, serve as custodian of, and to manage and operate the detention facility or to contract for its operation.

"(c) To receive funds from the resident school districts of juveniles committed to the detention facility to be used for the education of juveniles in the facility.

"(d) To seek additional funds for the expansion, maintenance and operation of the detention facility and for programs and activities at the facility through gifts, grants, and donations from any and all public and private sources and to administer and disburse all funds received for the construction, expansion, maintenance and operation of the detention facility and for all programs and activities of the facility.

"(e) To cooperate and coordinate with the regional jail in the Tenth Judicial District with respect to feeding inmates, providing laundry services to inmates, maintenance of facilities at the regional jail and the juvenile detention facility, purchase of supplies, and such other services and purchases as the Council and the officials of the regional jail feel appropriate.

"(f) To cooperate and contract with any and all educational institutions in the area for providing education resources for inmates at the detention facility.

"(g) To contract with any and all health providers in the area including the Arkansas Department of Health for providing health services to inmates of the detention facility.

"(h) To establish a schedule of fees or charges to be billed to the various political

subdivisions for the detention of juveniles in the facility.

"SECTION 4. (a) The Council is authorized to employ a director and such other personnel as it deems necessary and appropriate to assure the effective and efficient operation of the detention facility.

"(b) The Council, by a majority vote of its members, may elect to participate in the Arkansas Public Employees Retirement System and to include its full-time employees within the membership of the Arkansas Public Employees Retirement System. The Council may pay the contributions as the Arkansas Public Employees Retirement System Board of Trustees shall prescribe.

"SECTION 5. The Council shall have the authority to adopt appropriate policies and practices regarding the operation of the detention facility as it deems necessary to assure the effective and efficient operation of the facility.

"SECTION 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

"SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"SECTION 8. All laws and parts of laws in conflict with this act are hereby repealed.

"SECTION 9. EMERGENCY. It is hereby found and determined by the General Assembly that funds have been made available for the construction and operation of a juvenile detention facility in the Tenth Judicial District; that it is urgent that such facility be established as soon as practical; that before such facility can be established and operational, an appropriate body must be established to provide for the construction and to supervise the operation of the facility; and that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public

peace, health and safety shall be in full force and effect from and after its passage and approval.”

Effective Dates. Acts 1989, No. 486, § 10; Mar. 10, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is necessary to prohibit the unnecessary incarceration of juveniles, to prohibit such juveniles from being treated as criminals, to place such juveniles under proper care, and to prohibit juveniles from associating with hardened adult criminals; and that the immediate passage of this act is necessary for the protection of juveniles. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation and protection of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 1468, § 4; Apr. 10, 2001. Emergency clause provided: “It is found

and determined by the General Assembly that the continued operation of the juvenile detention centers located in Independence County, Yell County, Jefferson County, Washington and Miller Counties, is jeopardized by the obligation to repay existing revolving loans to the state. It is in the best interest of the public to abate these obligations to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

12-41-801. Title.

This subchapter shall be referred to and may be cited as the “Juvenile Detention Facilities Cooperative Development and Operations Act”.

History. Acts 1989, No. 486, § 1.

12-41-802. Legislative findings and determinations.

(a) The General Assembly finds that adequate juvenile detention facilities are essential to the safety and welfare of the people of this state.

(b) It is legislatively determined that adequate juvenile detention facilities need to be made available and that a feasible and economic way of financing, constructing, acquiring, and operating the same is by authorizing cooperative endeavors for development and operation under the authority of this subchapter.

History. Acts 1989, No. 486, § 2.

12-41-803. Definitions.

As used in this subchapter:

(1) “Governing body” means the:

- (A) City council or board of directors or comparable body for a city;
- (B) Town council or board of directors or comparable body for a town; and
- (C) Quorum court for a county;

(2) “Juvenile detention facility” means any facility for the temporary care of juveniles alleged to be delinquent, or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility’s staff, so that a juvenile may not leave the facility unsupervised or without permission;

(3) “Local governmental units” means a city of any class, a town, or a county; and

(4) “State” means the State of Arkansas.

History. Acts 1989, No. 486, § 3.

12-41-804. Regional detention facilities.

(a) Local governmental units are authorized to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local governmental units.

(b) Local governmental units may contract with the state through the Division of Youth Services of the Department of Human Services for the financing, acquisition, construction, and operation of juvenile detention facilities, in particular, in accordance with the provisions and procedures as outlined in the Interlocal Cooperation Act, § 25-20-101 et seq.

History. Acts 1989, No. 486, § 4.

12-41-805. [Repealed.]

Publisher’s Notes. This section, concerning capital grant and revolving loan fund accounts, was repealed by Acts 2001,

No. 1468, § 1. The section was derived from Acts 1989, No. 486, § 5.

12-41-806. Matching requirements.

(a)(1) Grant and loan funds shall only be awarded under this subchapter upon submission of evidence of the ability to provide an amount of local public or private dollars, or both, equal to or greater than one-third ($\frac{1}{3}$) of the state’s capital grant contribution to any project.

(2) In no event shall the state capital grant contribution to any project authorized under this subchapter exceed the sum of one hundred fifty thousand dollars (\$150,000).

(b) Any revolving loan funds utilized in meeting the total cost of any project authorized under this subchapter shall be interest free and shall have terms not to exceed ten (10) years.

(c) Any award of funds under this section shall be subject to review and approval by the Division of Youth Services of the Department of

Human Services, which shall promulgate rules and regulations to effectuate the provisions of this section.

History. Acts 1989, No. 486, § 6.

12-41-807. Operating fund account.

(a) There is hereby established an operating fund account not to exceed the amount of five hundred thousand dollars (\$500,000) per annum, the express purpose of which is to provide a supplement to the local operations fund for the continuing operation of secure facilities for juveniles as alternatives to placement of juveniles in adult detention facilities.

(b)(1) The allowable uses of the operating fund account shall be to provide up to but not to exceed one-third ($\frac{1}{3}$) of the annual operations costs for a juvenile detention facility as authorized in this subchapter.

(2) The funds shall be applied for the continuing operations of juvenile detention facilities as authorized in this subchapter together with such other general funds, if any, as may be provided by any governing body individually or in combination with each other, as established for the purposes authorized in this subchapter.

(c) The Division of Youth Services of the Department of Human Services shall promulgate rules and regulations to effectuate the provisions of this section.

History. Acts 1989, No. 486, § 7.

12-41-808. Abatement of loan balances.

Any loan balances accrued pursuant to the revolving loan fund account are abated.

History. Acts 2001, No. 1468, § 2.

former § 12-41-805 has been repealed by

A.C.R.C. Notes. The revolving loan fund account established pursuant to Acts 2001, No. 1468, § 1.

12-41-809. Juvenile detention centers or facilities.

(a) Juvenile detention centers or juvenile detention facilities shall operate to provide pretrial detention and short term sanctions as provided for in § 9-27-330.

(b) The Division of Youth Services of the Department of Human Services has no obligation to utilize or fund juvenile detention centers or juvenile detention facilities.

History. Acts 2001, No. 1468, § 3.

CHAPTER 42

LABOR OF COUNTY AND CITY PRISONERS

SECTION.

- 12-42-101. Definition.
- 12-42-102. Penalties.
- 12-42-103. County farm — Purchase authorized.
- 12-42-104. Leasing procedure exclusive.
- 12-42-105. Workhouses and public works.
- 12-42-106. Contracts with other counties, cities, or towns — Liability.
- 12-42-107. Procedure when satisfactory contract cannot be made.
- 12-42-108. Superintendent.
- 12-42-109. Management of convicts not hired.

SECTION.

- 12-42-110. Labor on public works restricted.
- 12-42-111. Credit for labor.
- 12-42-112. Compensation of artisan or mechanic.
- 12-42-113. Warrants for costs.
- 12-42-114. Arrest of escapees.
- 12-42-115. Records of convicts.
- 12-42-116. Work-study release.
- 12-42-117. Voluntary labor.
- 12-42-118. Appropriations.

Effective Dates. Acts 1877, No. 73, § 16: effective on passage.

Acts 1881, No. 81, § 16: effective on passage.

Acts 1883, No. 78, § 6: effective on passage.

Acts 1893, No. 120, § 5: effective on passage.

Acts 1899, No. 111, § 5: effective on passage.

Acts 1939, No. 118, § 9: approved Feb. 22, 1939. Emergency clause provided: "It is determined by the General Assembly that many counties, cities, and towns in the State of Arkansas do not have facilities for the safe-keeping of prisoners convicted of misdemeanor cases and that many prisoners convicted of misdemeanor cases are now abused because of being leased into private industry; therefore, an

emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, will be in force from and after its passage."

Acts 1961, No. 254, § 3: approved Mar. 14, 1961. Emergency clause provided: "It is hereby determined that there exist in the State of Arkansas certain counties having inadequate county farm facilities which affect the health and welfare of the citizens of said counties, and the health and welfare of the State of Arkansas, and this act being necessary for the preservation of the peace, health, and safety of the people of the State of Arkansas an emergency is hereby declared to exist and this act shall take effect and be in full force from and after the passage."

12-42-101. Definition.

As used in §§ 12-42-109, 12-42-110, 12-42-112, 12-2-113, and 12-42-115, "county convicts" means persons convicted of misdemeanors or petty offenses and committed to jail in default of the payment of the fine and costs adjudged against them.

History. Acts 1877, No. 73, § 14, p. 73; C. & M. Dig., § 2059; Pope's Dig., § 2661; A.S.A. 1947, § 46-519.

12-42-102. Penalties.

(a) Any person, firm, or corporation, and any county judge or mayor of any city or incorporated town who works any prisoner or enters into a contract to lease and work any prisoner convicted of a misdemeanor, when the punishment is fixed by fine or imprisonment in any county or city jail in violation of the provisions of this section or §§ 12-42-104 — 12-42-107, shall be guilty of a misdemeanor.

(b) Upon conviction, he or she shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) and may be imprisoned not exceeding ninety (90) days.

History. Acts 1939, No. 118, § 7; A.S.A. 1947, § 46-512.

12-42-103. County farm — Purchase authorized.

Plenary power is conferred upon the county levying court at its regular or specially called meeting, to authorize the county court or the county judge thereof in vacation to purchase in the name and for the benefit of the county, a tract of land not to exceed two thousand (2,000) acres, or the levying court shall have the power, if it deem best, to direct the court or the county judge thereof in vacation, to lease in the name and for the benefit of the county, a farm upon which the county prisoners shall be worked under the provisions of this section or §§ 12-42-108, 12-42-114, 12-42-115, 16-90-405, and 16-96-504 [repealed].

History. Acts 1881, No. 81, § 11, p. 148; 1893, No. 120, § 4, p. 207; 1899, No. 111, § 1, p. 179; C. & M. Dig., § 2081; Pope's Dig., § 2683; Acts 1961, No. 254, § 2; A.S.A. 1947, § 46-520.

A.C.R.C. Notes. Section 16-96-504 was repealed by Acts 2005, No. 1994, § 558.

12-42-104. Leasing procedure exclusive.

It shall be unlawful for any county judge or mayor of any city or incorporated town or any person to lease or contract for the lease of any prisoner convicted of a misdemeanor, whether a violation of the laws of the state or ordinance of any municipality, except as provided in this subchapter.

History. Acts 1939, No. 118, § 1; A.S.A. 1947, § 46-501.

12-42-105. Workhouses and public works.

(a) Any person who may be convicted of a misdemeanor or petty offense by any court in this state and who shall be committed to jail to serve a sentence imposed by any court of competent jurisdiction or who shall be in default of the payment of the fine and costs adjudged against him or her may be required to discharge the sentence or fine and costs

by manual labor in any workhouse, farm, street, road, bridge, or other public work in the county where the conviction and committal occurred.

(b) However, the workhouse, farm, road, street, bridge, or other public work shall be owned, operated, or conducted by the State of Arkansas, any county thereof, or a city or incorporated town within the State of Arkansas.

History. Acts 1939, No. 118, § 2; A.S.A. 1947, § 46-502.

CASE NOTES

Cited: Howerton v. Mississippi County, 361 F. Supp. 356 (E.D. Ark. 1973).

12-42-106. Contracts with other counties, cities, or towns — Liability.

(a)(1) The county court or the county judge thereof in vacation, or the mayor of any city or incorporated town, when authorized to do so by an ordinance duly adopted by the city or town council or other governing body of the municipality, is authorized and empowered to make a contract with any other county, city, or town for the maintenance, safekeeping, and working of prisoners committed to county or city jails except prisoners awaiting trial.

(2) The county court, county judge, or mayor may make such contract as deemed in the best interests of the county, city, or incorporated town.

(b) For the purpose of making a contract to effectuate the provisions of this section and §§ 12-42-102, 12-42-104, 12-42-105, and 12-42-107, the county court or county judge of any county, and the mayor, with the approval of the city or town council, or other governing body of any municipality, is vested with plenary power.

(c) Any county, city, or town contracting for the safekeeping of prisoners under the provisions of this section and §§ 12-42-102, 12-42-104, 12-42-105, and 12-42-107, shall obligate itself to furnish the convicts with good and wholesome food, comfortable clothing, and medicine when sick and shall not require them to work at unreasonable hours or for a longer time during any one (1) day than other laborers doing the same kind of labor are accustomed to do.

(d) No county sheriff, constable, mayor, or other officer to whom a person is committed for imprisonment to serve a sentence imposed for misdemeanor or petty offense or in default of the payment of fine and costs therefor shall be responsible for the health, safety, or welfare of the person if the county sheriff, constable, mayor, or other officer shall deliver the person to any county, city, or town other than that of which the former is an officer, pursuant to a contract for the maintenance, safekeeping, and working of prisoners authorized by statute.

History. Acts 1939, No. 118, §§ 3, 6; 1965, No. 371, § 2; A.S.A. 1947, §§ 46-504, 46-511, 46-511.1.

CASE NOTES

Constitutionality.

The practice of contracting the work of inmates of penal institutions of other counties on public projects in a county is not equivalent to working of inmates to

pay fines and costs and, therefore, does not violate equal protection secured by U.S. Const., Amend. 14. *Howerton v. Mississippi County*, 361 F. Supp. 356 (E.D. Ark. 1973).

12-42-107. Procedure when satisfactory contract cannot be made.

(a)(1) If the county court or county judge thereof in vacation, or the mayor of any city or incorporated town, is unable to make a satisfactory contract with some county, city, or incorporated town, or if the contract does not necessarily, by its terms, cover all persons committed to jail to serve a sentence or in default of the payment of a fine and costs adjudged against him or her, in the county or city where the conviction is had, then the county court or county judge thereof may order the prisoners to be worked.

(2) The prisoners may be worked on the public roads, bridges, levees, or any other public improvement of the county or may perform any other lawful labor for the benefit of the county.

(b) The city or town council or the governing body of any municipality or the mayor thereof may order the prisoners worked on any public streets, alleys, public buildings, public parks, or any other public improvements of the city or may order them to perform any other lawful labor for the benefit of the city, under such rules and regulations not inconsistent with the provisions of this section or §§ 12-42-102 and 12-42-104 — 12-42-106, as the county court or county judge thereof, or the mayor and governing body of any municipality thereof may prescribe.

History. Acts 1939, No. 118, § 4; 1965, No. 371, § 1; A.S.A. 1947, § 46-505.

12-42-108. Superintendent.

(a) In the event that the county court or county judge thereof shall order the prisoners to be worked on roads, bridges, levees, or other county improvements, it shall be the duty of the county court or county judge thereof to appoint some suitable person as superintendent to take charge of, manage, and control the labor of the prisoners, who shall, for the purpose of working them, be authorized to employ such guards or adopt such means to prevent escapes as may be necessary.

(b) The superintendant shall have all the power of punishing for refusal to work given to contractors in this subchapter.

(c) Upon the order of the county judge, the county sheriff shall deliver to the superintendent all prisoners in his or her custody and

receive them back from him or her whenever he or she shall return them for any purpose to the jail.

(d) The superintendent shall take an oath to faithfully discharge his or her duties and shall receive such compensation for his or her services as the court may fix.

(e) The superintendant may be at any time removed by the county court or county judge, and another may be appointed by the county judge in vacation, subject to approval at the next term of the county court.

History. Acts 1881, No. 81, § 12, p. 148; 1899, No. 111, § 2, p. 179; C. & M. Dig., §§ 2082, 2086; Pope's Dig., §§ 2684, 2688; A.S.A. 1947, §§ 46-506, 46-507.

CASE NOTES

Constitutionality.

This section is directory and not mandatory and therefore not in conflict with

Ark. Const., Art. 7, § 28. State ex rel. Richardson v. Mack, 191 Ark. 350, 86 S.W.2d 11 (1935).

12-42-109. Management of convicts not hired.

(a) Unless the convicts are immediately hired out, the management and control of the county convicts shall be confined to county courts either in term time or in vacation by the county judge.

(b) The county court or county judge shall always have the right to require the aid of the county sheriff and constables of their respective counties. All lawful orders or process necessary to be issued and executed shall be executed by the county sheriff or constable.

History. Acts 1877, No. 73, § 12, p. 73; C. & M. Dig., § 2057; Pope's Dig., § 2659; A.S.A. 1947, § 46-517.

12-42-110. Labor on public works restricted.

No county convict shall be allowed to work on any public work or improvement whenever there may be danger of his or her escape, nor shall he or she be compelled to labor at any kind of business or in any avocation that would tend to impair his or her health or strength.

History. Acts 1877, No. 73, § 10, p. 73; C. & M. Dig., § 2055; Pope's Dig., § 2657; A.S.A. 1947, § 46-516.

12-42-111. Credit for labor.

(a) Every county court or a county official designated by the county court may utilize persons convicted and committed to the county jails to perform manual labor in any workhouse, farm, road, street, bridge, or other public work owned, operated, or conducted by the state or any county, city, or incorporated town within the state.

(b)(1) An inmate performing such labor shall receive compensatory time in the amount of one (1) additional day's credit against his or her sentence for each day's labor.

(2) The county court shall determine what constitutes a day's labor.

(c) Furthermore, the county court or a county official designated by the county court shall determine which inmates may participate in this program and the extent of their participation.

History. Acts 1979, No. 27, § 1; 1985, No. 931, § 1; A.S.A. 1947, § 46-502.1.

12-42-112. Compensation of artisan or mechanic.

If any person so convicted is an artisan or mechanic and is put to labor in any manual labor workhouse, or on any bridge or other public improvement, the artisan or mechanic shall be allowed a reasonable compensation for the labor, but the compensation shall not be paid to the artisan or mechanic.

History. Acts 1877, No. 73, § 2, p. 73; C. & M. Dig., § 2047; Pope's Dig., § 2648; A.S.A. 1947, § 46-503.

12-42-113. Warrants for costs.

When convicts employed on public works or improvements or in public workhouses shall have paid the full amount of their fines and costs by their labor, then the county court shall issue a warrant in favor of each officer to whom costs may be due, for the amount of his or her costs, on the county treasurer, and it shall be paid if there are sufficient funds in the county treasury.

History. Acts 1877, No. 73, § 9, p. 73; C. & M. Dig., § 2054; Pope's Dig., § 2656; A.S.A. 1947, § 46-515.

CASE NOTES

Necessity for Prior Appropriation.

The county court had no authority to bind the county for the payment of costs of misdemeanor cases by employing county convicts upon public works unless the

levying court had previously made an appropriation for the purpose. *Johnson County v. Jamison*, 85 Ark. 609, 109 S.W. 1025 (1908).

12-42-114. Arrest of escapees.

(a) If any prisoner shall escape from the contractor or superintendent, the contractor or superintendent shall have the right to arrest the prisoner, in person or through any county sheriff or constable, anywhere in the state.

(b) The prisoner, when arrested, shall be delivered to the contractor or county sheriff of the county, and shall be compelled to work out all

costs in making his or her arrest, in the manner provided in this section and §§ 12-42-103, 12-42-108, 12-42-115, 16-90-405, and 16-96-504 [repealed].

History. Acts 1881, No. 81, § 14, p. 148; C. & M. Dig., § 2088; Pope's Dig., § 2690; A.S.A. 1947, § 46-513.

A.C.R.C. Notes. Section 16-96-504 was repealed by Acts 2005, No. 1994, § 558.

12-42-115. Records of convicts.

(a) The county court shall cause a record of all its proceedings under §§ 12-42-101, 12-42-109, 12-42-110, 12-42-112, 12-42-113, and this section to be recorded in a well-bound book to be provided for that purpose. The record shall contain:

- (1) A descriptive list of all persons known as county convicts;
- (2) How the convict has been or is employed;
- (3) The name of the party or parties hiring the convict;
- (4) The time when and the price at which the convict has been employed;
- (5) The amount paid or allowed for the employed or hired convict;
- (6) The amount due by the convict as fine and costs; and
- (7) Such other information as may be necessary and required under the rules adopted by the court.

(b) It shall be the duty of the contractor or superintendent to keep a record in which shall be stated the name of the prisoner, his or her height, race, age, complexion, color of eyes and hair, time of commitment, and the punishment adjudged by the court or justice, as well as the number of days the convict may be held to labor and a record of the days worked by the prisoner.

History. Acts 1877, No. 73, § 13, p. 73; 1881, No. 81, § 15, p. 148; 1883, No. 78, § 4, p. 125; C. & M. Dig., §§ 2058, 2090; Pope's Dig., §§ 2660, 2692; A.S.A. 1947, §§ 46-514; 46-518.

Publisher's Notes. This section, insofar as it relates to the hiring of convicts by private contractors, may be affected by § 12-42-104.

12-42-116. Work-study release.

(a) As used in this section:

(1) "Chief executive officer" means the county sheriff of the county if the criminal detention facility is owned or operated by a county of this state or the chief of police if the criminal detention facility is owned or operated by a municipality of this state;

(2) "Legislative body" means the quorum court of the county in which the county-owned or operated criminal detention facility is located, or if the criminal detention facility is owned or operated by a municipality, it means whatever body is authorized to adopt ordinances for that jurisdiction; and

(3) "Work-release" means programs under which inmates selected to participate in such programs may be gainfully employed or attend schools outside of a jail.

(b) Any person who may be convicted by any court in this state and who is committed to a jail to serve a sentence imposed by any court of competent jurisdiction or in default of the payment of the fine and costs adjudged against him or her may be released for the purpose of participation in work-release programs under the conditions and procedures contained in subsections (c) and (d) of this section.

(c) The chief executive officer may allow inmates as described in subsection (b) of this section to participate in work-release programs in accordance with rules, regulations, and procedures adopted by the chief executive officer.

(d) Under any work-release program, earnings by the inmate shall be paid directly to the chief executive officer and applied as follows:

(1) The chief executive officer shall retain an amount to be established by the legislative body which will reasonably compensate the chief executive officer for the cost of feeding and housing the inmate;

(2) The chief executive officer shall determine if the inmate has persons depending upon him or her for their support and may remit to such persons that portion of the earnings which the chief executive officer considers reasonable; and

(3)(A) The chief executive officer shall determine if the inmate has created victims of his or her criminal conduct who are entitled to restitution or reparations for physical injury or loss of or damage to property and may remit to such victims that portion of the earnings which the chief executive officer considers reasonable.

(B) However, in no case shall the portion of earnings remitted for restitution be in excess of twenty-five percent (25%) of the inmate's income remaining after deductions for the cost of care and custody and family support in subdivisions (d)(1) and (2) of this section.

(C) The names and addresses of the victims and the amount of restitution to be paid shall be provided to the chief executive officer by certificate of the trial court in which the defendant was convicted.

History. Acts 1977, No. 413, §§ 1-3; 1985, No. 1046, § 1; A.S.A. 1947, §§ 46-421 — 46-423.

CASE NOTES

Cited: *Brewer v. State*, 274 Ark. 38, 621 S.W.2d 698 (1981).

12-42-117. Voluntary labor.

(a) Any of the prisoners in the county jails located in counties having a population of between twenty-four thousand five hundred (24,500) and twenty-five thousand five hundred (25,500) and between forty-seven thousand five hundred (47,500) and forty-seven thousand six hundred (47,600) inhabitants may be permitted to voluntarily work in any cemetery or on any other public project in those counties.

(b) The prisoners shall be allowed a credit on any fine owed of five dollars (\$5.00) for each day they perform such voluntary labor.

History. Acts 1967, No. 89, § 1; A.S.A. 1947, § 46-521.

12-42-118. Appropriations.

At its annual or specially called meeting for making appropriations, the county court shall make the necessary appropriations to carry out the purposes of this section and §§ 12-42-103, 12-42-108, 12-42-114, 12-42-115, 16-90-405, and 16-96-504 [repealed].

History. Acts 1899, No. 111, § 4, p. 179; C. & M. Dig., § 2084; Pope's Dig., § 2686; Acts 1961, No. 254, § 1; A.S.A. 1947, § 46-509.

A.C.R.C. Notes. Section 16-96-504 was repealed by Acts 2005, No. 1994, § 558.

CASE NOTES

Necessity for Prior Appropriation.

The county court had no authority to bind the county for the costs in misdemeanor cases by employing county convicts upon public works unless the levying

court had previously made an appropriation for the purpose. *Johnson County v. Jamison*, 85 Ark. 609, 109 S.W. 1025 (1908).

CHAPTERS 43-47

[Reserved]

CHAPTER 48

ARKANSAS ADULT PROBATION COMMISSION

SECTION.

12-48-101 — 12-48-106. [Repealed.]

12-48-101 — 12-48-106. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 1993, No. 549, § 9. The chapter was derived from the following sources:

12-48-101. Acts 1983, No. 151, § 2; A.S.A. 1947, § 42-1302.

12-48-102. Acts 1983, No. 151, §§ 1, 3, 4, 6, 7; A.S.A. 1947, §§ 42-1301, 42-1303 — 42-1305.

12-48-103. Acts 1983, No. 151, §§ 9-17; 1985, No. 483, § 1; A.S.A. 1947, § 42-1307.

12-48-104. Acts 1983, No. 151, § 8; A.S.A. 1947, § 42-1306.

12-48-105. Acts 1983, No. 151, § 18; 1985, No. 483, § 2; A.S.A. 1947, § 42-1308.

12-48-106. Acts 1983, No. 151, §§ 19-24; A.S.A. 1947, § 42-1309.

Acts 1993, No. 549, § 7 provided that the Board of Correction and Community Punishment shall succeed to all powers, functions, and duties formerly vested in the State Penitentiary Board and Arkansas Adult Probation Commission.

CHAPTER 49

INTERSTATE COMPACTS

SUBCHAPTER.

1. INTERSTATE CORRECTIONS COMPACT.
2. SOUTH CENTRAL INTERSTATE CORRECTIONS COMPACT.
3. BI-STATE CRIMINAL JUSTICE CENTER COMPACT.
4. EMERGENCY MANAGEMENT ASSISTANCE COMPACT.

SUBCHAPTER 1 — INTERSTATE CORRECTIONS COMPACT

SECTION.

- 12-49-101. Title.
12-49-102. Text of Interstate Corrections Compact.

SECTION.

- 12-49-103. Director's powers.

12-49-101. Title.

This subchapter may be cited as the "Interstate Corrections Compact".

History. Acts 1973, No. 315, § 1; A.S.A. 1947, § 46-1401.

12-49-102. Text of Interstate Corrections Compact.

The Interstate Corrections Compact is enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

ARTICLE I

Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II

Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (d) above may lawfully be confined.

ARTICLE III

Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care of an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing

or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V

Acts Not Reviewable in Receiving State: Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing

contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such states.

ARTICLE VIII

Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX

Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation, or

treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X

Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History. Acts 1973, No. 315, § 2; A.S.A. 1947, § 46-1402.

CASE NOTES

ANALYSIS

Credit for Time Served.
Prisoners' Rights.

Credit for Time Served.

Prisoner who was transferred to Florida then returned to Arkansas pursuant to this section was entitled to good time and other benefits he earned while in Florida as if he had earned them in Arkansas. *Hayes v. Lockhart*, 754 F.2d 281 (8th Cir. 1985).

Prisoners' Rights.

Although the defendant was housed in administrative segregation before his

transfer from Arkansas to Florida, when he was released into the general prison population in Florida it was equivalent to a release into the general prison population in Arkansas, and, accordingly, when he was returned to Arkansas the Arkansas prison officials were required to follow the guidelines in the Department of Correction's administrative regulations before reassigning him to administrative segregation. *Hayes v. Lockhart*, 754 F.2d 281 (8th Cir. 1985).

12-49-103. Director's powers.

The Director of the Department of Correction is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular, and he or she may in his or her discretion delegate this authority to other appropriate officials under his or her employ.

History. Acts 1973, No. 315, § 3; A.S.A. 1947, § 46-1403.

SUBCHAPTER 2 — SOUTH CENTRAL INTERSTATE CORRECTIONS COMPACT

SECTION.

12-49-201. Signing and ratification —
Terms.

SECTION.

12-49-202. When compact effective — Ex-
change of documents.**12-49-201. Signing and ratification — Terms.**

The Governor on behalf of this state is authorized to execute a compact, in substantially the following form, with any one (1) or more of the states of Alabama, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas, and the General Assembly hereby signifies in advance its approval and ratification of the compact:

SOUTH CENTRAL INTERSTATE CORRECTIONS COMPACT**Article I****Purpose**

The party states find that special problems involved in the incarceration of women prisoners make it impracticable for each state to provide facilities and programs of sufficiently high quality for the confinement, treatment, and rehabilitation of women prisoners in accordance with recognized penological standards. Accordingly, it is the policy of each of the party states to provide such programs and facilities on a basis of co-operation with one another thereby making possible the operation and maintenance of correctional institutions for women on an efficient basis that will promote the best interest of women prisoners and of society as a whole. To these ends, the purpose of this Compact is to provide adequate care and rehabilitation of women prisoners, in the South Central States through effective interstate co-operation.

Article II**Definitions**

A. As used in this Compact, the term "sending state" shall mean a state party to this Compact in which conviction was had.

B. As used in this Compact, the term "receiving state" shall mean a state party to this Compact to which a prisoner is sent for incarceration other than the state in which conviction was had.

C. A "woman prisoner" as used herein is any female prisoner who has been convicted of a criminal offense and is subject to commitment under the laws of a sending state.

Article III

Board Created

There is hereby created the South Central Interstate Corrections Board, an agency of the states party to this Compact, with the powers and duties conferred upon it by this Compact. The Board shall be composed of two members from each party state to be designated and to serve as provided by the law of such state. At least one member from each party state shall be an officer of an administrative agency of such state dealing with penal or correctional institutions.

Article IV

Board Powers and Duties

The Board shall have power to:

1. Study interstate problems in the corrections fields and recommend such measures as it may deem necessary for administrative or legislative action by the party states.
2. Study and recommend groupings of the party states with respect to the use of each Compact Institution as defined herein so as to facilitate the most efficient service of the area, use of the institution, and care and rehabilitation of the prisoners.
3. Receive from time to time and review reports from each receiving state concerning costs, methods, practices, rehabilitation programs, and returns from programs of prisoner employment, if any, in the Compact Institutions and make general recommendations as to the administration of the interstate program in such institutions.
4. Receive copies of all contracts between or among party states entered into pursuant to this Compact and make general recommendations as to procedures, practices, and contract provisions.
5. Receive and expend for the purposes of this Compact any funds that a party state may from time to time appropriate and make such accounting therefor as the party state may require.

Article V

Board Meetings, Rules, Expenses

The Board shall meet at least once each year and shall elect annually from among its members a chairman, vice-chairman, and secretary. The Board shall adopt rules and regulations for the conduct of its business. The expenses of each Board member and of such other persons who may attend meetings of the Board or its panels or committees on behalf of a state shall be met by that state in accordance with its law.

Article VI

Contracts and Reports

A. The appropriate administrative agencies of the party states may enter into contracts consistent with and embodying the standards contained in this Compact covering in specific terms the charge or charges of the receiving state for prisoner care and the obligations of the sending and receiving states for delivery and retaking of prisoners and for services which shall be rendered, for duration of contract, and for all other necessary matters.

B. The representatives on the Board of any group of states which have entered into arrangements with respect to a Compact Institution may constitute a panel of the Board which shall have the power to make recommendations regarding that institution.

C. An appropriate administrative officer in each state within which a Compact Institution is located shall make annual reports to the Board as to the loads, costs, methods, practices, rehabilitation programs, and returns from programs of prisoner employment, if any, in such Compact Institution including such recommendations as to these matters and as to the interstate program as such administrator may deem advisable.

D. Copies of all contracts entered into under this article shall be filed with the Board in such manner as it may prescribe.

Article VII

Reports to Governors and Legislatures

The Board shall report annually to the Governors and legislatures of the party states concerning all activities under this Compact and such recommendations for action by the party states as the Board shall deem necessary.

Article VIII

Rights and Duties of Sending and Receiving States

A. Whenever the duly constituted judicial or administrative authorities in a state party to the Compact and which has entered a contract under Article VI, shall decide that incarceration of a woman prisoner within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide the best available program of rehabilitation said officials may direct that the incarceration be within a prison or other correctional institution within the territory of said other party state, such receiving state to act in that regard solely as agent for the sending state.

B. Upon the request of the South Central Interstate Corrections Board established by Article III of this Compact, any state which adopts this Compact may designate a correctional institution for women within said state as a "Compact Institution" wherein other party states may incarcerate women prisoners whenever contracts therefor shall be

made pursuant to Article VI of this Compact. The appropriate administrative and legislative officials of any state party to this Compact shall have access to any Compact Institution at all reasonable times for the purpose of inspecting the facilities thereof and visiting such of its prisoners as may be confined in the institution.

C. Persons confined in a Compact Institution pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said Compact Institution for transfer to a prison or other correctional institution within the sending state, for transfer to another Compact Institution, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be provided pursuant to the terms of any contracts entered into under the provisions of Article VI.

D. Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in the Compact Institution including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

E. All persons who may be confined in a Compact Institution pursuant to the provisions of this Compact shall be treated in a reasonable and humane manner. The fact of incarceration in a receiving state shall not deprive any person so incarcerated of any legal rights which said person would have had if incarcerated in an appropriate institution of the sending state.

F. Any hearing or hearings to which a prisoner incarcerated pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event that such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

G. Any person incarcerated under the terms of this Compact shall be released within the territory of the sending state unless the prisoner

and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

Article IX

When Effective

This Compact shall enter into force and become effective and binding upon the states so acting when it has been enacted by any two of the States of Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas, and, thereafter, shall enter into force and become effective and binding as to any other of said states upon similar action by such other state.

Article X

Withdrawal

This Compact shall continue in force and remain binding upon a party state until the legislature or Governor of such state, as its laws shall provide, takes action to withdraw therefrom. Such action shall not be effective until two years after the notice thereof has been sent by the Governor of the state desiring to withdraw to the Governors of all the other states then party to the Compact. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal a withdrawing state shall remove to its territory at its own expense such prisoners as it may have incarcerated pursuant to the provisions of this Compact.

Article XI

Severability

The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be unconstitutional or the applicability thereof to any state, agency, person, or circumstance is held invalid, the constitutionality of this Compact and the applicability thereof to any other state, agency, person, or circumstance shall not be affected thereby. It is intended that the provisions of this Compact be reasonable and liberally construed.

History. Acts 1957, No. 361, § 1; A.S.A. 1947, § 46-1001.

12-49-202. When compact effective — Exchange of documents.

(a) When the Governor shall have executed the Compact on behalf of this state and, shall have caused a verified copy thereof to be filed with the Secretary of State, and, when the Compact shall have been ratified

by one (1) or more of the states named in § 12-49-201, then the Compact shall become operative and effective as between this state and such other state or states.

(b) The Governor is authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying the Compact.

History. Acts 1957, No. 361, § 2; A.S.A. 1947, § 46-1002.

SUBCHAPTER 3 — BI-STATE CRIMINAL JUSTICE CENTER COMPACT

SECTION.

12-49-301. Text of Bi-State Criminal Justice Center Compact.

Cross References. Criminal justice centers, § 12-41-201 et seq.

12-49-301. Text of Bi-State Criminal Justice Center Compact.

SECTION 1

The State of Arkansas hereby relinquishes exclusive jurisdiction over the portion of the plant and facility of the Bi-State Criminal Justice Center which is located within the geographical boundary of the said state.

SECTION 2

The State of Texas hereby relinquishes exclusive jurisdiction over the portion of the plant and facility of the Bi-State Criminal Justice Center which is located within the geographical boundary of the said state.

SECTION 3

The States of Arkansas and Texas hereby recognize the existence of concurrent jurisdiction over the geographical areas of both states which are within the Bi-State Criminal Justice Center.

SECTION 4

The State of Arkansas recognizes that an inmate apprehended and charged in Texas maintains a jurisdictional situs (with Texas) within his person and extending to objects under his control, while incarcerated in the Bi-State facility.

SECTION 5

The State of Texas recognizes that an inmate apprehended and charged in Arkansas maintains a jurisdictional situs (with Arkansas) within his person and extending to objects under his control, while incarcerated in the Bi-State facility.

SECTION 6

The States of Arkansas and Texas mutually agree to refrain from taking custody of any inmate, for an offense committed prior to incarceration in the Bi-State facility, while that inmate is in custody of the other state, except through proper extraditionary proceedings.

SECTION 7

The States of Arkansas and Texas mutually agree to refrain from serving any inmate of the Bi-State facility in the custody of the other state, with civil process relating to a suit arising before incarceration, except in accordance with proper civil procedure statutes.

SECTION 8

The State of Arkansas grants use of its facility to the State of Texas for the purposes of establishing the venue of Bowie County within the concurrent jurisdiction of the facility in courtrooms situated geographically on the Arkansas side.

SECTION 9

The State of Texas grants use of its facility to the State of Arkansas for the purpose of establishing the venue of Miller County within the concurrent jurisdiction of the facility in courtrooms situated geographically on the Texas side.

SECTION 10

This Compact shall come into force and become effective and binding upon the states when it has been enacted into law by both states.

History. Acts 1979, No. 19, §§ 1-10;
A.S.A. 1947, § 46-1501.

SUBCHAPTER 4 — EMERGENCY MANAGEMENT ASSISTANCE COMPACT

SECTION.

12-49-401. Short title.

12-49-402. Text of Compact.

Effective Dates. Acts 1997, No. 959, § 3: Mar. 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to the

potential danger posed to the citizens of the State of Arkansas by natural, man-made disaster, or act of war, there is an immediate need to implement the provisions of this act in the interest of public safety and welfare. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of

its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

12-49-401. Short title.

This subchapter may be cited as the “Emergency Management Assistance Compact”.

History. Acts 1997, No. 959, § 1.

12-49-402. Text of Compact.

The Emergency Management Assistance Compact is hereby enacted into law and entered into with all other states which adopt the compact in a form substantially as follows:

Emergency Management Assistance Compact

ARTICLE I — PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term “states” is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states’ National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II — GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III — PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

ii. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

iv. Assist in warning communities adjacent to or crossing the state boundaries.

v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

i. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

ii. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV — LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V — LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI — LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII — SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII — COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX — REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any

equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X — EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI — IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the

Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII — VALIDITY

This Act shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII — ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

History. Acts 1997, No. 959, § 2.

CHAPTER 50

CORRECTIONS COOPERATIVE ENDEAVORS AND
PRIVATE MANAGEMENT ACT

SECTION.

- 12-50-101. Title.
- 12-50-102. Legislative determination.
- 12-50-103. Definitions.
- 12-50-104. Construction.
- 12-50-105. Regional correctional commissions.
- 12-50-106. Contracts for correctional facilities.
- 12-50-107. Authority of security employ-

SECTION.

- ees — Applicability of criminal laws.
- 12-50-108. Nondelegable responsibilities.
- 12-50-109. Financing — Contracts with Arkansas Development Finance Authority.
- 12-50-110. Hiring preference.
- 12-50-111. Private correctional facilities.

Effective Dates. Acts 1987, No. 427, § 13: Mar. 26, 1987. Emergency clause provided: "The General Assembly hereby finds and declares that adequate and modern facilities are essential to the safety and welfare of the people of this state; and that adequate and modern facilities need to be made available and that the most feasible and least expensive way of financ-

ing and acquiring the same is by authorizing cooperative endeavors and private management under the authority of this act. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall be effective upon its passage and approval."

12-50-101. Title.

This chapter shall be referred to and may be cited as the “Corrections Cooperative Endeavors and Private Management Act”.

History. Acts 1987, No. 427, § 1.

CASE NOTES

Cited: Gravett v. Villines, 314 Ark. 320, 862 S.W.2d 260 (1993).

12-50-102. Legislative determination.

(a) The General Assembly finds that adequate and modern prison facilities are essential to the safety and welfare of the people of this state.

(b) It is legislatively determined that adequate and modern prison facilities need to be made available and that a feasible and economic way of financing, constructing, acquiring, and operating prison facilities is by authorizing cooperative endeavors and private management under the authority of this chapter.

History. Acts 1987, No. 427, § 2.

12-50-103. Definitions.

As used in this chapter:

- (1) “Board” means the Board of Corrections;
- (2) “Bond” or “bonds” means all bonds, notes, certificates, or other instruments or evidences of indebtedness issued by the Arkansas Development Finance Authority to finance prison facilities;
- (3) “Correctional services” means the following functions, services, and activities when provided within a prison or otherwise:
 - (A) The operation of facilities, including management, custody of inmates, and providing security;
 - (B) Food services, commissary, medical services, transportation, sanitation, or other ancillary services;
 - (C) Development and implementation assistance for classification, management, information systems, or other information systems or services;
 - (D) Education, training, and jobs programs; and
 - (E) Counseling, special treatment programs, or other programs for special needs;
- (4) “Department” means the Department of Correction;
- (5) “Director” means the Director of the Department of Correction;
- (6) “Governing body” means:
 - (A) The city council or board of directors or comparable body for a city;
 - (B) The town council or board of directors or comparable body for a town; or

(C) The quorum court for a county;

(7) "Local facilities" means those correctional facilities that are under the jurisdiction of a political subdivision;

(8) "Political subdivision" means a city of any class, a town, or a county;

(9) "Prison", "facility", or "prison facility" means any institution operated by or under the authority of the department or a political subdivision, public facilities board, redevelopment district, county sheriff, or chief of police and includes, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means, any physical betterment or improvement related to the housing of inmates or any preliminary plans, studies, or surveys relative thereto; land or rights to land; and any furnishings, machines, vehicles, apparatus, or equipment for use in connection with any prison facility;

(10) "Prison contractor" or "contractor" means any entity entering a contractual agreement to provide any correctional services to inmates under the custody of the state or a political subdivision, public facilities board, or redevelopment district;

(11) "Private correctional facility" means any prison, facility, or prison facility in which correctional services for inmates are provided by a prison contractor or contractor;

(12) "State" means the State of Arkansas; and

(13) "State facilities" means those correctional facilities that are under the jurisdiction of the department.

History. Acts 1987, No. 427, § 3; 2001, No. 616, § 1.

12-50-104. Construction.

(a)(1) This chapter shall be liberally construed to accomplish the intent and purposes thereof and shall be the sole authority required for the accomplishment of those purposes.

(2) To this end, it shall not be necessary to comply with general provisions of other laws dealing with public commodities and public facilities, their acquisition, construction, leasing, encumbering, or disposition, if the Board of Corrections and the regional corrections commission shall comply with § 12-50-106.

(b) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1987, No. 427, § 12.

12-50-105. Regional correctional commissions.

(a) Political subdivisions may individually, or in combination with each other, contract with the state through the Department of Correc-

tion or with prison contractors for the financing, acquisition, construction, and operation of facilities for the housing of inmates.

(b)(1) In the event two (2) or more counties jointly enter into an agreement with the state or with a prison contractor, they shall form a regional corrections commission, which shall be composed of the county judge of each county or his or her or her designee.

(2) In the case of a commission having an even number of parties, the appointed representatives of the parties to the commission shall select an additional person, who is acceptable to all representatives to the commission, to serve on the commission.

(3) The members of the commission shall serve terms of three (3) years' duration, shall be eligible for reappointment, and may be removed only for cause by the quorum court of the county which they represent.

(4) In the event of a vacancy other than by expiration of term, the vacancy shall be filled by the governing body of the county of the representative unable to complete his or her term.

(c)(1) In the event that any city or town, with or without one (1) or more counties, enters into an agreement with the state or with a prison contractor, the chief executive officer of each city or town or his or her designee shall serve on the commission.

(2) In the case of a commission having an even number of parties, the appointed representatives of the parties to the commission shall select an additional person, who is acceptable to all other members of the commission, to serve on the commission.

(3) The members of the commission shall serve terms of three (3) years' duration, shall be eligible for reappointment, and may be removed only for cause by the governing body of the city or town which they represent.

(4) In the event of a vacancy other than by expiration of term, the vacancy shall be filled by the governing body of the political subdivision of the representative unable to complete his or her term.

(d) In any contract for correctional services entered into pursuant to this chapter by a regional corrections commission, the commission members shall submit to the governing body of each political subdivision for approval the following contract terms:

(1) The fee to be paid by each political subdivision;

(2) The minimum financial guarantees of each political subdivision; and

(3) The method of billing.

History. Acts 1987, No. 427, § 4.

12-50-106. Contracts for correctional facilities.

(a) The Department of Correction, any regional corrections commission, and any political subdivision are authorized to enter into contracts with each other and with prison contractors for the financing, acquiring, constructing, and operating of facilities.

(b) Any contract for the financing, acquiring, constructing, or operating of facilities between the department and a prison contractor shall be approved by the Board of Corrections, subject to the advice and consent of the Legislative Council.

(c) Contracts entered into under the terms of this chapter shall be negotiated with the firm found most qualified. However, no contract for correctional services may be entered into unless the private contractor demonstrates that it has:

(1) The qualifications, experience, and management personnel necessary to carry out the terms of the contract;

(2) The financial strength and ability to provide indemnification for liability arising from large prison management projects;

(3) Evidence of past performance of similar contracts; and

(4) The ability to comply with applicable court orders and correctional standards.

(d) Contracts awarded under the provisions of this section, including contracts for the provision of correctional services or for the lease or use of public lands or buildings for use in the operation of state or local facilities, may be entered into for a period of up to twenty (20) years, subject to the requirement for annual appropriation of funds by each political subdivision and subject to the requirement of biennial appropriations by the state.

(e) Contracts awarded under the provisions of this section at a minimum shall comply with the following:

(1) Provide for internal and perimeter security to protect the public, employees, and inmates;

(2) Provide inmates with work or training opportunities while incarcerated. However, the contractor shall not benefit financially from the labor of inmates;

(3) Impose discipline on inmates only in accordance with applicable rules and procedures; and

(4) Provide proper food, clothing, housing, and medical care for inmates.

(f) No contract for correctional services shall be entered into unless the following requirements are met:

(1) The contractor provides audited financial statements for the previous five (5) years, or for each of the years the contractor has been in operation, if fewer than five (5) years and provides other financial information as requested; and

(2)(A) The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims.

(B) The indemnification plan shall be adequate to protect the state, political subdivisions, and public officials, including county sheriffs and chiefs of police, from all claims and losses incurred as a result of the contract.

(C) Nothing in this section is intended to deprive a prison contractor, the state, or a political subdivision of the benefits of any law limiting exposure to liability or setting a limit on damages.

History. Acts 1987, No. 427, § 5.

12-50-107. Authority of security employees — Applicability of criminal laws.

(a) Security employees of a prison contractor shall be allowed to use force and shall be licensed pursuant to § 17-40-101 et seq. The security employees shall exercise their powers and authority only while:

(1) On the grounds of an institution under the supervision of the prison contractor;

(2) Transporting inmates; and

(3) Pursuing escapees from the institution.

(b) The provisions of § 5-54-101 et seq. and § 12-29-109 shall apply to offenses committed by or with regard to inmates assigned to facilities or programs for which a prison contractor is providing correctional services.

History. Acts 1987, No. 427, §§ 6, 7.

12-50-108. Nondelegable responsibilities.

No contract for correctional services shall authorize, allow, or imply a delegation of authority or responsibility of the Director of the Department of Correction or the county sheriff of any county or the police chief of any city or town to a prison contractor for any of the following:

(1) Developing and implementing procedures for calculating inmate release and parole eligibility dates;

(2) Developing and implementing procedures for calculating and awarding sentence credits;

(3) Approving inmates for furlough and work release;

(4) Approving the type of work inmates may perform and the wages or sentences credits which may be given the inmates engaging in that work; and

(5) Granting, denying, or revoking sentence credits.

History. Acts 1987, No. 427, § 8.

12-50-109. Financing — Contracts with Arkansas Development Finance Authority.

(a)(1) The Board of Corrections and any regional corrections commission are authorized and empowered to cooperate and contract with the Arkansas Development Finance Authority to provide for the payment of the principal of, premium, if any, interest on, and trustee's and paying agent's fees in connection with bonds issued to finance the acquisition, construction, and operation of prison facilities authorized under this chapter to be secured by a lien on and pledge of one (1) or more of the following:

(A) All revenues derived from payments to be made by the Department of Correction for the housing of prisoners;

(B) All revenues derived from payments to be made by political subdivisions for the housing of prisoners; or

(C) Any other revenues authorized by the General Assembly or the governing body of any political subdivision.

(2)(A) Any documents relating to those pledges shall state that the pledge is subject to annual appropriation by the governing body or biennial appropriation of the General Assembly, respectively.

(B) It shall not be necessary to the perfection of the lien and pledge for those purposes that the trustee in connection with the bond issue or the holders of the bonds take possession of the collateral security.

(b) In addition to any other approved method of financing, counties may utilize the provisions of the County Jail Revenue Bond Act of 1981, § 12-41-601 et seq. as a permissible means of financing correctional facilities to be used pursuant to the contracts entered into under the provisions of this chapter.

History. Acts 1987, No. 427, § 9.

12-50-110. Hiring preference.

State and political subdivision employees whose employment becomes subject to a contract with a private prison contractor shall be given a hiring preference for available positions for which they qualify by the contractor.

History. Acts 1987, No. 427, § 10.

12-50-111. Private correctional facilities.

(a)(1) No private correctional facility in which inmates committed to the Department of Correction, out-of-state inmates, or federal inmates are to be housed shall be constructed nor shall any facility be renovated for the purpose of creating a private correctional facility in which inmates committed to the department, out-of-state inmates, or federal inmates are to be housed within the state without review and approval by the Board of Corrections and review and approval by the Legislative Council.

(2) Review of requests for construction at a minimum shall include:

(A) Consideration of the location, design, security level, and financing of the facility; and

(B) The nature of the inmates to be housed in the facility.

(b)(1) Except as provided in subsection (e) of this section, no facility located within this state, except a facility operated by the Federal Bureau of Prisons, may house out-of-state or federal inmates without approval of the board.

(2) Review of requests to house such inmates may include, among other factors, consideration of the design and security level of the facility and the nature of the inmates to be housed in the facility.

(3) Approval must be obtained at least annually.

(c)(1)(A) Except as provided in subsection (e) of this section, no facility located within this state, except a facility operated by the Federal Bureau of Prisons, may house out-of-state or federal inmates unless the board has certified that the state does not need some or all of the capacity of the facility for state inmates.

(B) Such certification shall be obtained at least annually.

(2) The board shall also certify the custody levels of any facility housing out-of-state or federal inmates.

(d) The board, in its discretion, may declare an emergency and waive the provisions of subsection (a) of this section to make use of available space for housing state inmates.

(e) Subsections (b) and (c) of this section shall not be construed to prohibit the temporary detention in this state of any out-of-state or federal inmate transported to this state for the purpose of appearing in court or any suspected alien detained by authority of the Department of Homeland Security, nor shall subsections (b) and (c) of this section be construed to alter or affect the operation of any interstate compact or agreement between this state or any other state or the federal government regarding the detention and housing of inmates.

History. Acts 1999, No. 380, § 1.

CHAPTER 51

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.
- 3. ACTIVITIES AND FUNCTIONS OF THE INTERSTATE COMMISSION.
- 4. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION.
- 5. FINANCE.
- 6. WITHDRAW, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT.
- 7. SEVERABILITY AND CONSTRUCTION.
- 8. BINDING EFFECT OF COMPACT AND OTHER LAWS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-51-101. Purpose.
- 12-51-102. Definitions.
- 12-51-103. Interstate Commission for Adult Offender Supervision.

SECTION.

- 12-51-104. The state council.
- 12-51-105. Powers and duties of the interstate commission.

12-51-101. Purpose.

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this

compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states. In addition, this compact will create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct non-compliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(b) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

History. Acts 2001, No. 253, § 1.

RESEARCH REFERENCES

- U. Ark. Little Rock L. Rev. Survey of Management, 24 U. Ark. Little Rock L. Legislation, 2001 Arkansas General Assembly, Law Enforcement and Emergency Rev. 501.

12-51-102. Definitions.

As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law;

(2) "Bylaws" mean those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct;

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact;

(4) "Compacting state" means any state which has enacted the enabling legislation for this compact;

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact, i.e., § 12-51-103;

(6) "Interstate commission" means the Interstate Commission for Adult Offender Supervision established by this compact;

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner;

(8) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact;

(9) "Offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies;

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private;

(11) "Rules" means acts of the interstate commission, duly promulgated pursuant to Article VIII of this compact, i.e., § 12-51-302, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states;

(12) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States; and

(13) "State council" means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact, i.e., § 12-51-103.

History. Acts 2001, No. 253, § 1.

12-51-103. Interstate Commission for Adult Offender Supervision.

(a)(1) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision".

(2) The interstate commission shall be a body corporate and joint agency of the compacting states.

(3) The interstate commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state.

(c)(1) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims.

(2) All noncommissioner members of the interstate commission shall be ex-officio (nonvoting) members. The interstate commission may provide in its bylaws for such additional, ex-officio, nonvoting members as it deems necessary.

(d)(1) Each compacting state represented at any meeting of the interstate commission is entitled to one (1) vote.

(2) A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(3) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven (27) or more compacting states, shall call additional meetings.

(4) Public notice shall be given of all meetings and meetings shall be open to the public.

(e)(1) The interstate commission shall establish an executive committee which shall include commission officers, members, and others as shall be determined by the bylaws.

(2) The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and/or amendment to the compact.

(3) The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

History. Acts 2001, No. 253, § 1.

12-51-104. The state council.

(a) An Arkansas State Council for the Interstate Commission for Adult Offender Supervision is created, which shall consist of the following members:

(1) One (1) nonelected person, chosen from a list of five (5) names submitted by the Director of the Department of Community Correction, who will act as the representative of the legislative branch of government, to be appointed by the President Pro Tempore of the Senate;

(2) One (1) representative of the judicial branch of government, who is not an acting judge, appointed by the Governor;

(3) The members of the Board of Corrections, who will act as representatives of the executive branch of government, appointed by the Governor;

(4) One (1) representative from a victims group appointed by the Governor; and

(5) The Director of the Department of Community Correction who, in addition to serving as a member of the council, shall be appointed by the Governor as the compact administrator for the state.

(b) The council shall appoint the compact administrator as the Arkansas commissioner to the interstate commission, who shall serve on the interstate commission in such capacity under or pursuant to the applicable law of this state.

(c) The council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by the council, including development of policy concerning operations and procedures of the compact within this state.

History. Acts 2001, No. 253, § 1; 2005, No. 1153, § 1.

Amendments. The 2005 amendment rewrote (a)(1).

12-51-105. Powers and duties of the interstate commission.

The Interstate Commission for Adult Offender Supervision shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

(2) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission;

(4) To enforce compliance with compact provisions, interstate commission rules and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(5) To establish and maintain offices;

(6) To purchase and maintain insurance and bonds;

(7) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions, including, but not limited to, an executive committee as required by Article III, i.e., § 12-51-103, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(13) To establish a budget and make expenditures and levy dues as provided in Article X, i.e., § 12-51-601 et seq., of this compact;

(14) To sue and be sued;

(15) To provide for dispute resolution among compacting states;

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

(18) To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

History. Acts 2001, No. 253, § 1.

SUBCHAPTER 2 — ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

SECTION.

12-51-201. Bylaws.

12-51-202. Officers and staff.

12-51-203. Corporate records of the interstate commission.

SECTION.

12-51-204. Qualified immunity, defense, and indemnification.

12-51-201. Bylaws.

The Interstate Commission for Adult Offender Supervision shall, by a majority of the members, within twelve (12) months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission; and
(2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:

(A) For the establishment of committees;

(B) Governing any general or specific delegation of any authority or function of the interstate commission;

(C) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting; establishing the titles and responsibilities of the officers of the interstate commission; providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission; and

(D) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations; providing transition rules for “start up” administration of the compact; establishing standards and procedures for compliance and technical assistance in carrying out the compact.

History. Acts 2001, No. 253, § 1.

12-51-202. Officers and staff.

(a)(1) The Interstate Commission for Adult Offender Supervision shall, by a majority of the members, elect from among its members a chair and a vice chair, each of whom shall have such authorities and duties as may be specified in the bylaws.

(2) The chair or, in his or her absence or disability, the vice chair, shall preside at all meetings of the interstate commission.

(3) The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(b)(1) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate.

(2) The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

History. Acts 2001, No. 253, § 1.

12-51-203. Corporate records of the interstate commission.

The Interstate Commission for Adult Offender Supervision shall maintain its corporate books and records in accordance with the bylaws.

History. Acts 2001, No. 253, § 1.

12-51-204. Qualified immunity, defense, and indemnification.

(a)(1) The members, officers, executive director, and employees of the Interstate Commission for Adult Offender Supervision shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities; provided, that nothing in this subdivision (a)(1) of this section shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

(b) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee, or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

History. Acts 2001, No. 253, § 1.

SUBCHAPTER 3 — ACTIVITIES AND FUNCTIONS OF THE INTERSTATE COMMISSION

SECTION.

12-51-301. Activities of the interstate commission.

SECTION.

12-51-302. Rulemaking functions of the interstate commission.

12-51-301. Activities of the interstate commission.

(a) The Interstate Commission for Adult Offender Supervision shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c)(1) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission.

(2)(A) A member shall vote in person on behalf of the state and shall not delegate a vote to another member state.

(B) However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting.

(3) The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication, shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chair of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e)(1) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying.

(2) The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(3) In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f)(1) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact.

(2) The interstate commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act", 5 U.S.C. § 552(b), as may be amended.

(3) The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(A) Relate solely to the interstate commission's internal personnel practices and procedures;

(B) Disclose matters specifically exempted from disclosure by statute; disclose trade secrets or commercial or financial information which is privileged or confidential;

(C) Involve accusing any person of a crime, or formally censuring any person;

(D) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(E) Disclose investigatory records compiled for law enforcement purposes;

(F) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(G) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

(H) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g)(1) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision.

(2) The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item, and the record of any roll call vote, reflected in the vote of each member on the question.

(3) All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

History. Acts 2001, No. 253, § 1.

12-51-302. Rulemaking functions of the interstate commission.

(a) The Interstate Commission for Adult Offender Supervision shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b)(1) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto.

(2) Such rulemaking shall substantially conform to the principles of the Federal Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 1 et seq., as may be amended, hereinafter “APA”.

(3) All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the interstate commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

(e) Not later than sixty (60) days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia, or in the Federal District Court where the interstate commission’s principal office is located for judicial review of such rule. If the court finds that the interstate commission’s action is not supported by substantial evidence, as defined in the APA, in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(f) Subjects to be addressed within twelve (12) months after the first meeting must at a minimum include:

(1) Notice to victims and opportunity to be heard;

(2) Offender registration and compliance;

(3) Violations or returns;

(4) Transfer procedures and forms;

(5) Eligibility for transfer;

(6) Collection of restitution and fees from offenders;

(7) Data collection and reporting;

(8) The level of supervision to be provided by the receiving state;

(9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

(10) Mediation, arbitration, and dispute resolution.

(g) The existing rules governing the operation of the previous compact superceded by this chapter shall be null and void twelve (12) months after the first meeting of the interstate commission created hereunder.

(h) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule.

History. Acts 2001, No. 253, § 1.

SUBCHAPTER 4 — OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

SECTION.

12-51-401. Oversight.

12-51-402. Dispute resolution.

SECTION.

12-51-403. Enforcement.

12-51-401. Oversight.

(a) The Interstate Commission for Adult Offender Supervision shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(b) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

History. Acts 2001, No. 253, § 1.

12-51-402. Dispute resolution.

(a) The compacting states shall report to the Interstate Commission for Adult Offender Supervision on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

(b) The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

(c) The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

History. Acts 2001, No. 253, § 1.

12-51-403. Enforcement.

The Interstate Commission for Adult Offender Supervision in the reasonable exercise of its discretion shall enforce the provisions of this compact using any or all means set forth in Article XII, Section B, i.e., § 12-51-602, of this compact.

History. Acts 2001, No. 253, § 1.

SUBCHAPTER 5 — FINANCE

SECTION.	SECTION.
12-51-501. Expenses — Assessments — Accounts.	12-51-502. Compacting states, effective date, and amendment.

12-51-501. Expenses — Assessments — Accounts.

(a) The Interstate Commission for Adult Offender Supervision shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b)(1) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission’s annual budget as approved each year.

(2) The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d)(1) The interstate commission shall keep accurate accounts of all receipts and disbursements.

(2) The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

History. Acts 2001, No. 253, § 1.

12-51-502. Compacting states, effective date, and amendment.

(a)(1) Any state, as defined in Article II of this compact, i.e., § 12-51-102, is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five (35) of the states.

(3) The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state.

(4) The governors of nonmember states or their designees will be invited to participate in Interstate Commission for Adult Offender Supervision activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(b)(1) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states.

(2) No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

History. Acts 2001, No. 253, § 1.

SUBCHAPTER 6 — WITHDRAW, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

SECTION.

12-51-601. Withdrawal.

12-51-602. Default.

SECTION.

12-51-603. Judicial enforcement.

12-51-604. Dissolution of compact.

12-51-601. Withdrawal.

(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact as a “withdrawing state” by enacting a statute specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repeal.

(c)(1) The withdrawing state shall immediately notify the chair of the Interstate Commission for Adult Offender Supervision in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(2) The interstate commission shall notify the other compacting states of the withdrawing state’s intent to withdraw within sixty (60) days of its receipt thereof.

(d) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal,

including any obligations, the performance of which extend beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

History. Acts 2001, No. 253, § 1.

12-51-602. Default.

(a) If the Interstate Commission for Adult Offender Supervision determines that any compacting state has at any time defaulted as a “defaulting state” in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(1) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(2) Remedial training and technical assistance as directed by the interstate commission; and

(3) Suspension and termination of membership in the compact.

(A) Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted.

(B) Immediate notice of suspension shall be given by the interstate commission to the Governor, the Chief Justice or Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state’s legislature, and the state council.

(b)(1) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules.

(2) The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default.

(3) The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension.

(4) Within sixty (60) days of the effective date of termination of a defaulting state, the interstate commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, and the majority and minority leaders of the defaulting state’s legislature and the state council of such termination.

(c) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination,

including any obligations, the performance of which extends beyond the effective date of termination.

(d)(1) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state.

(2) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

History. Acts 2001, No. 253, § 1.

12-51-603. Judicial enforcement.

(a) The Interstate Commission for Adult Offender Supervision may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the Federal District where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default.

(b) In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

History. Acts 2001, No. 253, § 1.

12-51-604. Dissolution of compact.

(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one (1) compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission for Adult Offender Supervision shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

History. Acts 2001, No. 253, § 1.

SUBCHAPTER 7 — SEVERABILITY AND CONSTRUCTION

SECTION.

12-51-701. Severability and construction.

12-51-701. Severability and construction.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

History. Acts 2001, No. 253, § 1.

SUBCHAPTER 8 — BINDING EFFECT OF COMPACT AND OTHER LAWS

SECTION.

12-51-801. Other laws.

12-51-802. Binding effect of the compact.

12-51-801. Other laws.

(a) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(b) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

History. Acts 2001, No. 253, § 1.

§ 1 also provided: "(c) Arkansas Code 16-

A.C.R.C. Notes. Acts 2001, No. 253, 93-901 through 903 is repealed."

12-51-802. Binding effect of the compact.

(a) All lawful actions of the Interstate Commission for Adult Offender Supervision, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(b) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(d) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

History. Acts 2001, No. 253, § 1.

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